



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 07-71**  
**May 22, 2002**

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## **CONFORMANCE WITH FACS 01-01, 01-02 AND 01-06; AND MISCELLANEOUS ADMINISTRATIVE AND TECHNICAL REVISIONS**

**BACKGROUND:** This PN revises the NASA FAR Supplement to conform with FAR changes made by FAC's 01-01, 01-02, and 01-06; and to make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

Item IV of FAC 01-01 amended various FAR subparts and clauses to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Item II of FAC 01-02 amended various FAR subparts to implement Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management. Item III of FAC 01-02 amended various FAR subparts and clauses to reflect changes to the Office of Management and Budget (OMB) prompt payment requirements and clarify existing FAR prompt payment coverage. Item V of FAC 01-06 amended various FAR subparts to rewrite procurement integrity coverage in plan language. This final rule makes changes to the NFS Parts 1803, 1811, 1822, 1823, and 1832 necessary to conform to the changes in FACs 01-01, 01-02, and 01-06. Additional changes dealing with NASA internal and administrative matters included in this rule clarify the approval authority for letter contracts; that "instrument" means the award document when referring to contracts, grants, cooperative agreements, or other agreements; and that term/level-of-effort, time-and-materials and labor hour contracts are not considered performance based contracts (PBC). Changes are made to Subparts 1806.3 and 1819.70 to delete text duplicative of the FAR. Changes are made to clauses in Part 1852 to identify optional (though preferable) forms for submission of information about technology innovations under NASA contracts and to identify the web site where these forms are available. Editorial changes are made throughout the NFS to reflect title changes. Lastly, technical amendments are made to Subpart 1804.74 and Part 1852 to update url listings.

**ACTION REQUIRED BY CONTRACTING OFFICERS:** All solicitations issued after May 22, 2002, must include the revised clauses if applicable. Solicitations issued before May 22, 2002, may be amended to include the revised clauses if including it would not unduly delay the acquisition.

**CLAUSE/PROVISION CHANGES:** This PN makes the following clause changes:

- (a) 1852.204-74, Central Contractor Registration, in paragraph (d) the url has been updated;
- (b) 1852.227-11, Patent Rights--Retention by the Contractor (Short Form), the text has been revised for clarity and to indicate NASA's preference for contractor use of either the electronic

or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions;

(c) 1852.227-70, New Technology, paragraphs (e)(3) through (e)(5) are redesignated as (e)(4) through (e)(6) respectively; and a new paragraph (e)(3) is added to indicate NASA's preference for contractor use of either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items;

(c) 1852.235-72, Instructions for Responding to NASA Research Announcements, in the second sentence of paragraph (a)(4), the word "award" is added immediately after the word "appropriate"; and

(d) The title "Associate Administrator" has been changed to "Assistant Administrator" in 1852.233-70, Protests to NASA.

**PARTS AFFECTED:** Changes are made in Parts 1801 through 1809, 1811, 1812, 1815 through 1817, 1819, 1822, 1823, 1825, 1828 through 1830, 1832, 1833, 1835, 1837, 1842, 1845, 1848 through 1850, and 1852.

**REPLACEMENT PAGES:** You may use the enclosed pages to replace Part 1801, Part 1802, Part 1803, 4:3, 4:4, 4:11, 4:12, 4:13, 4:14, 5:3, 5:4, 6:3, 6:4, 6:5 (page 6:6 is removed), 7:5, 7:6, 8:5, 8:6, 9:3, 9:4, 9:5, 9:6, Part 1811, Part 1812, 15:3, 15:4, 15:11, 15:12, 15:29, 15:30, 16:1, 16:2, 16:11, 16:12, 16:13, 17:1, 17:2, 17:3, 17:4, 19:1, 19:2, 19:3, 19:4, 19:5, 19:6, 19:7, 19:8, Part 1822, Part 1823, 25:1, 25:2, 28:3, 28:4, 28:5, Part 1829, 30:1, 30:2, Part 1832, 33:1, 33:2, 35:1, 35:2, 35:3, 35:4, Part 1837, 42:3, 42:4, 45:5, 45:6, 45:7, 45:8, 45:9, 45:10, Part 1948, 49:3, 49:4, Part 1850, 52:5, 52:6, 52:31, 52:32, 52:33, 52:34, 52:35, 52:36, 52:37, 52:38, 52:39, 52:40, 52:41, 52:42, 52:57, 52:58, 52:61, 52:62, 52-91, 52-92, 52-93, 52-94, 52-95, and 52-96.

**TYPE OF RULE AND PUBLICATION DATE:** This PN was published as a final rule in the Federal Register (67 FR 30602 - 30604) on May 7, 2002.

**HEADQUARTERS CONTACT:** Celeste Dalton, Code HK, (202) 358-1645, e-mail: [cdalton@hq.nasa.gov](mailto:cdalton@hq.nasa.gov).

R. Scott Thompson  
Director, Contract Management Division

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**PART 1801**  
**FEDERAL ACQUISITION REGULATIONS SYSTEM**

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**PART 1801**  
**FEDERAL ACQUISITION REGULATIONS SYSTEM**

**1801.000** Scope of part.

NASA FAR SUPPLEMENT

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement, also referred to as the NFS.

### **Subpart 1801.1--Purpose, Authority, Issuance**

#### **1801.103 Authority.**

(a) Under the following authorities, the Administrator has delegated to the Assistant Administrator for Procurement authority to prepare, issue, and maintain the NFS:

- (i) The National Aeronautics and Space Act of 1958 (Pub. L. 85-568; 42 U.S.C. 2451 et seq.).
- (ii) 10 U.S.C. chapter 137.
- (iii) Other statutory authority.
- (iv) FAR Subpart 1.3.

#### **1801.104 Applicability.**

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this regulation.

#### **1801.105 Issuance.**

##### **1801.105-1 Publication and code arrangement.**

- (a) The single official NASA-maintained version of the NFS is on the Internet (<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>).
- (b) The NFS is issued as chapter 18 of title 48, CFR.

##### **1801.105-2 Arrangement of regulations.**

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105-2(b)(1) are numbered 1801.105-2(b)(1)(A) and (B), rather than (1)(i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR part is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105-3 is numbered 1801.105-370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105-2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

##### **1801.106 OMB approval under the Paperwork Reduction Act.**

- (1) *NFS requirements.* The following OMB control numbers apply:

<b>NFS Segment</b>	<b>OMB Control Number</b>
1804.470	2700-0098
1804.74	2700-0097
1819	2700-0073
1819.72	2700-0078
1827	2700-0052
1831	2700-0080
1843	2700-0054
1843.71	2700-0094
NF 533	2700-0003
NF 1018	2700-0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700-0086 (acquisitions up to \$25,000), 2700-0087 (solicitations that may result in bids or proposals not exceeding \$500,000), 2700-0085 (solicitations that may result in bids or proposals exceeding \$500,000), 2700-0088 (contracts not exceeding \$500,000), and 2700-0089 (contracts exceeding \$500,000).

### **Subpart 1801.2--Administration**

#### **1801.270 Amendment of the NFS.**

(a) The NFS is amended by publishing changes in the Federal Register. These changes are then incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

(b) Compliance with a revision to the NFS shall be in accordance with the PN containing the revision. Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

#### **1801.271 NASA procedures for FAR and NFS changes.**

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b)(1) Formal requests for changes to the FAR or the NFS should be written and contain (i) a description of the problem the suggested revision is designed to cure, (ii) the revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language, (iii) the consequences of making no change and the benefits to be expected from a change, and (iv) any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

**1801.272 Procurement Information Circulars.**

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

**Subpart 1801.3--Agency Acquisition Regulations**

**1801.301 Policy.**

(a)(2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b) (i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define "significant effect beyond the internal operating procedures" or "significant cost or administrative impact." Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

**1801.303 Publication and codification.**

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

### **Subpart 1801.4--Deviations from the FAR**

#### **1801.400 Scope of subpart.**

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

#### **1801.471 Procedure for requesting deviations.**

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum --

- (1) Identification of the FAR or the NFS requirement from which a deviation is sought;
- (2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;
- (3) A description of its intended effect;
- (4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;
- (5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);
- (6) Detailed reasons supporting the request, including any pertinent background information; and
- (7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

### **Subpart 1801.6--Career Development, Contracting Authority, and Responsibilities**

#### **1801.601 General.**

The authority to contract for authorized supplies and services is delegated to the Assistant Administrator for Procurement and installation officials by NPD 5101.32.

#### **1801.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c) (7) The authority in FAR 1.602-3 may be exercised only when --

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request,

the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

**1801.603 Selection, appointment, and termination of appointment.**

**1801.603-2 Selection.**

Normally, only GS-1102 and -1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

**1801.670 Delegations to contracting officer's technical representatives (COTRs).**

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant.

**Subpart 1801.7--Determinations and Findings**

**1801.707 Signatory authority.**

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Assistant Administrator for Procurement or by a contracting officer.

**1801.770 Legal review.**

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.



**PART 1802**  
**DEFINITIONS OF WORDS AND TERMS**

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**PART 1802**  
**DEFINITIONS OF WORDS AND TERMS**

**1802.000 Scope of part.**

Commonly used words and terms are defined in FAR Subpart 2.1. This Part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

**Subpart 1802.1--Definitions**

**1802.101 Definitions.**

“**Administrator**” means the Administrator or Deputy Administrator of NASA.

“**Senior Procurement Executive**” means the Assistant Administrator or Deputy Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

“**Contracting activity**” in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Glenn Research Center at Lewis Field, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Marshall Space Flight Center and Stennis Space Center.

“**Head of the agency**” or “**agency head**” means the Administrator or Deputy Administrator of NASA.

“**Head of the contracting activity**” means, for field installations, the Director or other head and, for NASA Headquarters, the Director for Headquarters Operations.

“**Procurement officer**” means the chief of the contracting office, as defined in FAR 2.101.

“**NASA Acquisition Internet Service (NAIS)**” means the Internet service (URL: <http://procurement.nasa.gov>) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

**PART 1803**  
**IMPROPER BUSINESS PRACTICES**  
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**PART 1803**  
**IMPROPER BUSINESS PRACTICES**  
**AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1803.1--Safeguards**

**1803.101 Standards of conduct.**

**1803.101-1 General.**

The statutory prohibitions and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, 5 CFR Part 6901. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

**1803.101-2 Solicitation and acceptance of gratuities by Government personnel.**

Any suspected violations shall be reported promptly to the installation's Office of Inspector General.

**1803.104 Procurement integrity.**

**1803.104-1 Definitions.**

"Agency ethics official" means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

**1803.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties.

(i) Personnel participating in source evaluation board (SEB) procedures (see 1815.370) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

(iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

(vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in Subpart 1807.71.

(viii) Other Government employees authorized by the contracting officer.

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-4(a)(i)

through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in FAR 2.101 shall assure that the material is marked with the legend in FAR 3.104-4(c) at the time the material is prepared.

(ii) Unless marked with the legend "SOURCE SELECTION INFORMATION -- SEE FAR 2.101 and 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR Subpart 7.1). All documents, once released, must remain available to the public until the conclusion of the acquisition.

#### **1803.104-7 Violations or possible violations.**

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement (Code HS).

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement (Code HS) simultaneous with transmittal to the Administrator.

### **Subpart 1803.2--Contract or Gratuities to Government Personnel**

#### **1803.203 Reporting suspected violations of the Gratuities clause.**

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the installation's Office of Inspector General.

### **Subpart 1803.3--Reports of Suspected Antitrust Violations**

#### **1803.303 Reporting suspected antitrust violations.**

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth --

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict

competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

### **Subpart 1803.5--Other Improper Business Practices**

#### **1803.502 Subcontractor kickbacks.**

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

### **Subpart 1803.6--Contracts with Government Employees or Organizations Owned or Controlled by Them**

#### **1803.602 Exceptions.**

The Assistant Administrator for Procurement has been delegated the authority to authorize an exception to the policy in FAR 3.601. The Assistant Administrator for Procurement has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of \$100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Assistant Administrator for Procurement (Code HS) for approval.

### **Subpart 1803.7--Voiding and Rescinding Contracts**

#### **1803.704 Policy.**

(a) The Assistant Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

#### **1803.705 Procedures.**

Procurement officers shall make reports to the Assistant Administrator for Procurement (Code HS). The Assistant Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

### **Subpart 1803.8--Limitation on the Payment of Funds to Influence Federal Transactions**

#### **1803.804 Policy.**

Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF-

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LLL) furnished pursuant to FAR 3.803 to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for

the six-month period ending March 31st, and by October 15th for the period ending September 30th.

**1803.806 Processing suspected violations.**

The Assistant Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

**Subpart 1803.70--IG Hotline Posters**

**1803.7000 Policy.**

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

**1803.7001 Contract clause.**

Contracting officers must insert the clause at 1852.203-70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed \$5,000,000 and performed at contractor facilities in the United States.

1804.7401	Definitions.
1804.7402	Policy
1804.7403	Procedures.
1804.7404	Solicitation provisions and contract clauses.

## **PART 1804**

### **ADMINISTRATIVE MATTERS**

#### **Subpart 1804.1--Contract Execution**

##### **1804.103 Contract clause.**

The contracting officer shall include the clause at FAR 52.204-1, Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert "NASA Assistant Administrator for Procurement" in the clause's blank space.

##### **1804.170 Contract effective date.**

(a) "**Contract effective date**" means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205-32) and the clause prescribed at 1831.205-70 is used.

#### **Subpart 1804.2--Contract Distribution**

##### **1804.202 Agency distribution requirements.**

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076-1320.

##### **1804.203 Taxpayer identification information.**

Instead of using the last page of the contract to provide the information listed in FAR 4.203, NASA installations may allow contracting officers to use a different distribution method, such as annotating the cover page of the payment office copy of the contract.

#### **Subpart 1804.4--Safeguarding Classified Information Within Industry**

##### **1804.402 General.**

(b) NASA security policies and procedures are prescribed in NPD 1600.2A, NASA Security Policy; NPG 1600.6A, Communications Security Procedures and Guidelines; NPG 1620.1, Security Procedures and Guidelines; NPG 2810.1 and NPD 2810.1 Security of Information Technology.



**1804.404-70 Contract clause.**

The contracting officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

**1804.470 Security requirements for unclassified information technology resources.**

**1804.470-1 Scope.**

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources

**1804.470-2 Policy.**

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. The provision of information technology (IT) security in accordance with these policies and procedures, is required in all contracts that include IT resources or services in which a contractor must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

- (1) Computer control of spacecraft, satellites, or aircraft or their payloads;
- (2) Acquisition, transmission or analysis of data owned by NASA with significant replacement costs should the contractor's copy be corrupted; and
- (3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The contractor must not use or redistribute any NASA information processed, stored, or transmitted by the contractor except as specified in the contract.

**1804.470-3 Security plan for unclassified Federal Information Technology systems.**

(a) The requiring activity with the concurrence of the Center Chief Information Officer (CIO), and the Center Information Technology (IT) Security Manager, must determine whether an IT Security Plan for unclassified information is required.

(b) IT security plans must demonstrate a thorough understanding of NPG 2810.1 and NPD 2810.1 and must include, as a minimum, the security measures and program safeguards planned to ensure that the information technology resources acquired and used by contractor and subcontractor personnel --

- (1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;
- (2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;
- (3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

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(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

**1804.7101 Policy.**

(a) Contractual documents shall be numbered with approved prefixes and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of not more than 11 alpha-numeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

**1804.7102 Prefixes.**

(a) Approved prefixes are as follows:

INSTALLATION	CONTRACT PREFIX	PURCHASE ORDER PREFIX
Ames Research Center	NAS 2	A
Dryden Flight Research Center	NAS 4	E
Glenn Research Center at Lewis Field	NAS 3	C
Goddard Space Flight Center	NAS 5	S
Headquarters	NASW	W
Lyndon B. Johnson Space Center	NAS 9	T
John F. Kennedy Space Center	NAS10	CC
Langley Research Center	NAS 1	L
George C. Marshall Space Flight Center	NAS 8	H
NASA Management Office-JPL	NAS 7	WO
John C. Stennis Space Center	NAS 13	NS

(b) The contract prefix shall be used for the following documents:

(1) Contracts, including letter contracts, indefinite-delivery contracts, utilities contracts, leases of real property and renewals.

(2) Easements.

(3) Basic ordering agreements.

(4) Other written agreements involving payment or receipt of funds not covered by 1804.7102(e).

(c) Contracts totally funded under reimbursable arrangements with the Department of Energy shall use a DEN prefix instead of the NAS prefix (e.g., DEN 8 for Marshall).

(d) Space Act agreements awarded under the authority of Section 203(c)(5) or 203(c)(6) of the Space Act shall use an NCA prefix instead of the NAS prefix (e.g., NCA 8 for Marshall).

(e) The purchase order prefix shall be used for purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services.

(f) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the portion of the installation's contract prefix following "NAS."

(g) If a prefix is required for an installation or office not listed in this subsection, a request for a prefix assignment shall be submitted to the Headquarters Office of Procurement (Code HS).

**1804.7103 Serial numbers.**

(a) Installations shall number contracts and agreements identified in 1804.7102(b) serially by fiscal year. The serial number shall be five digits beginning with a two-digit fiscal year identifier followed by a three digits commencing with "001" and continuing in succession. For example, the first contracts awarded by Ames Research Center in fiscal year 1997 shall be numbered NAS 2 97001 and NAS 2 97002. Fiscal year identification is optional for Space Act agreements.

(b) Serial numbers for purchase orders shall be assigned serially without fiscal year identification. When the series of numbers exceeds five digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

**1804.7104 Modifications of contracts or agreements.**

(a) Modifications of definitive or letter contracts or agreements shall (1) bear the same identification as the contract or agreement being modified and (2) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a) of this subsection.

**Subpart 1804.72--Review and Approval of Contractual Instruments**

**1804.7200 Contract review by Headquarters.**

(a) Requests for approval of contracts and supplemental agreements by the Assistant Administrator for Procurement shall be submitted to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 15 days for review.

(b) Each request for approval shall be accompanied by (1) five copies of the contractual document, one of which has been executed by the contractor and contracting officer, and (2) the official contract file containing the appropriate documentation as set forth in FAR 4.803(a). However, for the items specified in FAR 4.803(a)10, (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, in lieu of the items specified in FAR 4.803(a)(26)(ii) and (iii), the contracting officer shall provide an index briefly describing the content of all previous modifications.

(c) The approval required under this section shall be made by signature of the Assistant Administrator for Procurement on the contract/supplemental agreement.

**Subpart 1804.73--Procurement Requests**

**1804.7301 General.**

(a) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been

received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when -

- (1) Such action is necessary to meet critical program schedules;
  - (2) Program authority has been issued and funds to cover the acquisition will be available prior to the date set for contract award or contract modification;
  - (3) The procurement officer authorizes such action in writing before solicitation issuance;
- and

(4) The solicitation includes the clause at FAR 52.232-18, Availability of Funds. The clause shall be deleted from the resultant contract.

(b) The contracting office shall not issue either a draft or final solicitation until a PR, either planning or final, has been received that contains an NPG 7120.5 certification. That certification must be made by the project or program office that initiated the PR, or the PR approval authority when there is no project or program office. The certification must state that either -

- (1) The requested action is not in support of programs and projects subject to the requirements of NPG 7120.5, or
- (2) The requested action is in support of programs and projects subject to the requirements of NPG 7120.5, and -
  - (i) All NPG 7120.5 required documentation is current and has been approved; or
  - (ii) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

### **Subpart 1804.74--Central Contractor Registration**

#### **1804.7400 Scope.**

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database.

#### **1804.7401 Definitions.**

“Central Contractor Registration (CCR) database,” “Data Universal Numbering System (DUNS) number,” “Data Universal Numbering System+4 (DUNS+4) number,” “Commercial and Government Entity (CAGE) Code,” and “Registered in the CCR database” are defined in the clause at 1852.204-74, Central Contractor Registration.

#### **1804.7402 Policy.**

Prospective contractors must be registered in the CCR database, prior to any award of a contract, purchase order, basic agreement, basic ordering agreement, or blanket purchase agreement after March 31, 2001. This policy applies to all types of awards except the following:

- (a) Purchases made with a Government-wide commercial purchase card.
- (b) Awards made to foreign vendors for work performed outside of the United States.
- (c) Purchases under FAR 6.302-2, Unusual and Compelling Urgency.

#### **1804.7403 Procedures.**

(a) (1) The contracting officer must verify that the prospective awardee is registered in the CCR database using either the Cage Code, DUNS number or, if applicable, the DUNS+4

number, via the Internet at <http://www.ccr.gov> or by calling toll free: 888-CCR-2423 (888-227-2423), commercial: 616-961-5757.

(2) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements in which vendor registration was verified at the time of award of the contract or agreement.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database after March 31, 2001, the contracting officer must --

(1) If delaying the acquisition would not be to the detriment of the Government, proceed to award after the contractor is registered;

(2) If delaying the acquisition would be to the detriment of the Government, proceed to award to the next otherwise successful registered offeror, with the written approval of the Procurement Officer; or

(3) If the offer results from an invitation for bids, determine the offer to be non-responsive and proceed to award to the next otherwise successful registered offeror.

(c) The contracting officer must protect against improper disclosure of contractor CCR information.

**1804.7404 Solicitation provisions and contract clauses.**

Except as provided in 1804.7402, the contracting officer must use the clause at 1852.204-74, Central Contractor Registration, in all solicitations and contracts, including those for commercial items.

excluding unexercised options, of \$25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of \$25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than \$25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303-70 have been completed.

**1805.303-70 NASA Headquarters public announcement.**

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

- (1) A brief description of the work, including identification of the program and project;
- (2) Identification of the contract action as either a new contract or additional work or services under an existing contract;
- (3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;
- (4) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;
- (5) Name and address (including zip code) of the contractor;
- (6) Principal work performance locations;
- (7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 P.M. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Assistant Administrator for Procurement (Code HS).

**1805.303-71 Administrator's notice of significant contract actions (ANOSCA's).**

(a) In addition to the public announcement requirements described in 1805.303-70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of \$25 million or more, including all priced options.

(2) Planned contract award of non-competitive awards and new work modifications of \$100 million or more, including all priced options.

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b)(1)-(10) of this section to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202-358-4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone of the impending transmission. In accordance with FAR 3.104-5(c), the contracting officer shall mark all pages that include source selection information with the legend "SOURCE SELECTION INFORMATION - SEE FAR 3.104." The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over \$1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) For competitive selections only, provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303-70.

**Subpart 1805.4--Release of Information**



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4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on (3).

(See Note 4 for the use of Alternates I and II below.)

**Alternate I:** The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because (5).

**Alternate II:** The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because (5).

### Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

**Alternate I:** It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

**Alternate II:** It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date\_\_\_\_\_

### NOTES:

1. Name of source to be excluded.
2. Description of estimated reduction in overall costs.
3. Description of how estimate was derived.
4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.
5. Description of circumstances necessitating the exclusion of the identified source.

### Subpart 1806.3--Other Than Full and Open Competition

#### 1806.302 Circumstances permitting other than full and open competition.

**1806.302-4 International agreement.**

**1806.302-470 Documentation.**

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition; and

(b) is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

**1806.302-7 Public interest.**

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code L). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302-7(c)(1) in any format that clearly documents the determination and the supporting findings.

**1806.303 Justifications.**

**1806.303-1 Requirements.**

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 to NASA Headquarters, Office of Procurement (Code HK), unless one of the exceptions at FAR 25.401 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1(d).

**1806.303-170 Sole-source purchases by contractors.**

The requirements of FAR Part 6 and NFS Part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified.

**1806.303-2 Content.**

**1806.303-270 Use of unusual and compelling urgency authority.**

If the authority at FAR 6.302-2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303-2 and;

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

**1806.304-70 Approval of NASA justifications.**

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR Subparts 6.2 and 6.3 shall be obtained as follows:

- (a) For proposed contracts over \$500,000 but not exceeding \$10,000,000 -
  - (1) Concurring official: Procurement Officer
  - (2) Approving official: Center or Headquarters Competition Advocate.
- (b) For proposed contracts over \$10,000,000 but not exceeding \$50,000,000 -
  - (1) Concurring officials:
    - (i) Procurement Officer
    - (ii) Center or Headquarters Competition Advocate
  - (2) Approving official: Center Director or Director for Headquarters Operations.
- (c) For proposed contracts over \$50,000,000 -
  - (1) Concurring officials:
    - (i) Procurement Officer
    - (ii) Center or Headquarters Competition Advocate
    - (iii) Center Director or Director for Headquarters Operations
    - (iv) Agency Competition Advocate
  - (2) Approving Official: Assistant Administrator for Procurement
- (d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.
- (e) For proposed contract actions requiring approval by the Assistant Administrator for Procurement, the original justification shall be forwarded to the Assistant Administrator for Procurement (Code HS).
- (f) Regardless of dollar value, class justifications shall be approved by the Assistant Administrator for Procurement.

**Subpart 1806.5--Competition Advocates**

**1806.501 Requirement.**

(1) The Deputy Assistant Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Headquarters Chief Financial Officer, Code CF, is the competition advocate for the Headquarters contracting activity.

**1806.502 Duties and Responsibilities.**

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Assistant Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures.

### **Subpart 1807.2--Planning for the Purchase of Supplies in Economic Quantities**

#### **1807.204 Responsibilities of contracting officers.**

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

### **Subpart 1807.3--Contractor Versus Government Performance**

#### **1807.307 Appeals.**

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

### **Subpart 1807.5--Inherently Governmental Functions**

#### **1807.503 Policy.**

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

### **Subpart 1807.70--Consolidated Contracting**

#### **1807.7000 General.**

The Consolidated Contracting Initiative (CCI) is NASA's commitment to the cooperative creation and utilization of contracts, whenever practicable, to meet common Agency needs. CCI aims at improving acquisition efficiency by identifying and logically combining similar requirements. Complete information on the initiative, with its implementation guidance, is available in the internet (<http://prod.nais.nasa.gov/cgi-bin/cci/first.cgi>).

### **Subpart 1807.71--Master Buy Plan**

**1807.7100 General.**

The Master Buy Plan provides information on planned acquisitions to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive acquisitions.

**1807.7101 Applicability.**

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements, and acquisitions through or from other Government agencies, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed \$50,000,000.

(b) For initial annual Master Buy Plan submission only, each installation shall submit its three largest acquisitions regardless of dollar value and all acquisitions over \$50,000,000.

(c) The procedure also applies to:

(1) Any supplemental agreement that contains either new work, a debit change order, or a credit change order (or any combination/ consolidation thereof), if the absolute value of the actions equals or exceeds \$50,000,000 (e.g., the absolute value of a supplemental agreement adding \$30,000,000 of new work and deleting \$30,000,000 of work is \$60,000,000, and is therefore subject to the Master Buy Plan).

(2) Any supplement agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan, even though the value does not equal or exceed \$50,000,000.

(3) Any cooperative agreement notice where the total value (the Government's contribution plus the contribution of the recipient) of any resulting cooperative agreement is expected to equal or exceed \$50,000,000.

(4) Any acquisition designated by NASA Headquarters regardless of its value.

(d) The Master Buy Plan does not apply to incremental funding actions or termination settlement agreements.

**1807.7102 Submission, selection, and notification procedures.**

**1807.7102-1 Submission of Master Buy Plan.**

(a) Prior to July 15th of every year, each installation shall submit to the Headquarters Office of Procurement (Code HS) a Master Buy Plan (electronically or original and eight copies) for the next fiscal year, listing every known acquisition that (1) meets the criteria in 1807.7101, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list all uncompleted acquisitions selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans. These acquisitions should be listed by the appropriate fiscal year Master Buy Plan and individual item numbers, and should indicate the current status of the individual acquisition documents previously selected for Headquarters review and approval.

Propellant, Hydrogen, Liquid, Type II, Spec MIL-P-27201  
 Propellant, Hydrogen Peroxide, Spec MIL-P-16005  
 Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL-P-16005  
 Propellant, Jet Fuel, Grade RJ-1, Spec MIL-F-25558  
 Propellant, JPX, 50 percent UDMH-50 percent JP-4, Spec MIL-P-26694  
 Propellant, JPX, 17 percent UDMH-83 percent JP-4, Spec MIL-P-26694  
 Propellant, Kerosene, Grade RP-1, Spec MIL-P-25576  
 Propellant, Monomethyl Hydrazine, Spec MIL-P-27404  
 Propellant, Neon, Liquid, AFPID 9135-16  
 Propellant, Nitric Acid, Type IIIB, Spec MIL-P-7254  
 Propellant, Nitric Acid, Type III LS, Spec MIL-P-7254  
 Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL-P-7254  
 Propellant, Nitrogen Tetroxide (NTO) (MON-1) (MON-3), Spec MIL-P-26539  
 Propellant, Nitrogen Tetroxide (NTO), MIL-P-26539  
 Propellant, Nitrogen Tetroxide (MON-1), Spec MIL-P-26539  
 Propellant, Nitrogen Tetroxide (MON-3), Spec MIL-P-26539  
 Propellant, Oxygen, Grade B, Spec MIL-P-25508  
 Propellant, Oxygen, Grade A, Spec MIL-P-25508  
 Propellant, Oxygen, Grade F, Spec MIL-P-25508  
 Propellant Pressurizing Agent, Helium, Spec MIL-P-27407, 99.995 pct min assay  
 Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL-P-27401  
 Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL-P-27401  
 Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL-P-27401  
 Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL-P-27401  
 Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL-P-27401  
 Propellant, Unsymmetrical Dimethyl-hydrazine, Spec MIL-P-25604  
 Propellant, Nitrogen Trifluoride Spec MIL-P-87896  
 Propellant Pressurizing Agent, Argon, Liquid, AFPID 9135-19

**1808.002-75 Acquisition of mercury.**

(a) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Mercury Contract Specialist, Directorate of Stockpile Contracts, DLA, Defense National Stockpile Center, 8725 John J. Kingman Rd., #3339, Ft. Belvoir, VA 22060-6223. DLA will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(b) Requests for clearance to purchase quantities of 76 pounds or more from sources other than DLA shall be submitted to the office in paragraph (a) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

**Subpart 1808.1--Excess Personal Property**

**1808.103 Information on available excess personal property.**

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

**Subpart 1808.4--Federal Supply Schedules**

**1808.404 Using schedules.**

**1808.404-3 Requests for waivers.**

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Assistant Administrator for Procurement (Code HS) for a final decision as to whether the non-schedule item will be purchased. The Assistant Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

**Subpart 1808.6--Acquisition from Federal Prison Industries, Inc.**

**1808.605 Clearances.**

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes occur, the contracting officer shall refer the matter to the Assistant Administrator for Procurement (Code HS) for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

**Subpart 1808.7--Acquisition from Nonprofit Agencies Employing  
People Who are Blind or Severely Disabled**

**1808.705 Procedures.**

**1808.705-1 General.**

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101-26.2) shall be used to obtain nonprofit agency-produced supplies from GSA supply distribution facilities.

**Subpart 1808.8--Acquisition of Printing and Related Supplies**

**1808.802 Policy.**



If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

**1809.106-70 Preaward surveys performed by NASA installations.**

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

**Subpart 1809.2--Qualifications Requirements**

**1809.200 Scope of subpart.**

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts consistent with the policies of NASA Policy Directive 8730.2, NASA Parts Policy.

**1809.202 Policy.**

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

**1809.203 QPL's, QML's and QBL's.**

**1809.203-70 General.**

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

**1809.203-71 Waiver of qualification requirements.**

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR Subpart 5.2).

**1809.206 Acquisitions subject to qualification requirements.**

**1809.206-1 General.**

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

**1809.206-70 Small businesses.**

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil-Bul-103) or the Qualified Manufacturers List (QML-38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

**1809.206-71 Contract clause.**

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209-70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

**Subpart 1809.4--Debarment, Suspension, and Ineligibility**

**1809.403 Definitions.**

For purposes of FAR Subpart 9.4 and this subpart, the Assistant Administrator for Procurement is the "debaring official," the "suspending official," and the agency head's "designee."

**1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.**

(c) The Office of Procurement (Code HK) is responsible for taking the actions listed in FAR 9.404(c).

(d)(1) Installation procurement offices shall notify Code HK of how many copies of the List they want and provide a single mailing address at the installation. Code HK will place the order for the copies which will be mailed directly to the installation. Electronic access is also available as described in the List.

**1809.405 Effect of listing.**

If it is believed that a new contract or subcontract must be awarded to a firm on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Assistant Administrator for Procurement (Code HK) for approval.

**1809.405-1 Continuation of current contracts.**

(c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

**1809.405-2 Restrictions on subcontracting.**

- (a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

**1809.406 Debarment.**

**1809.406-3 Procedures.**

- (a) The report required by FAR 9.406-3(a) shall be prepared in accordance with 1809.470.

**1809.407 Suspension.**

**1809.407-3 Procedures.**

- (a) Reports shall be prepared in accordance with 1809.470.

**1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.**

(a)(2)(A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Assistant Administrator for Procurement (Code HK), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Assistant Administrator for Procurement (Code HK) in accordance with 1809.470.

**1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.**

**1809.470-1 Situations requiring reports.**

A report incorporating the information required by 1809.470-2 of this subpart shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HK) when a contractor:

- (a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2; or
- (b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

**1809.470-2 Contents of reports.**

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

- (a) Name and address of the contractor.
- (b) Names of the principal officers, partners, owners, or managers.
- (c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.
- (d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.
- (e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, (3) whether current contracts should be terminated, and (4) the period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

#### **1809.470-3 Addresses and copies of reports.**

Reports, including enclosures, shall be submitted to the Office of Procurement (Code HK), with an additional copy to the Headquarters Office of General Counsel (Code G).

### **Subpart 1809.5--Organizational and Consultant Conflicts of Interest**

#### **1809.500 Scope of subpart.**

The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR Subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

#### **1809.503 Waiver.**

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Assistant Administrator for Procurement (Code HS) for action.

#### **1809.506 Procedures.**

(b) The approving official is the procurement officer when the installation has source selection authority and the Assistant Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

#### **1809.507 Solicitation provisions and contract clause.**

##### **1809.507-2 Contract clause.**

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts.

### **Subpart 1809.6--Contractor Team Arrangements**

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**PART 1811**  
**DESCRIBING AGENCY NEEDS**

**1811.002 Policy.**

(b) Implementation of the Metric Conversion Act of 1975, as amended, must be in accordance with NPD 8010.2B, Use of the Metric System of Measurements in NASA Programs.

**Subpart 1811.1--Selecting and Developing Requirements Documents**

**1811.101 Order of precedence for requirements documents.**

(a) Safeguards to ensure safety, security, and environmental protection must be included, as applicable, in requirements documents.

(b)(2) Requirements for the use of environmentally preferable products will be established in accordance with NPG 8830.1, "Affirmative Procurement Plan for Environmentally Preferable Products." Requirements for the use of energy and water efficient products and the use of renewable energy technology will be established in accordance with NPG 8570.1, "Energy Conservation Technologies and Practices."

**1811.107 Solicitation provisions.**

(b) NASA uses the categorical method to report its use of voluntary consensus standards. Therefore, use of the provisions at 52.211-7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

#### **Subpart 1811.4--Delivery or Performance Schedules**

##### **1811.403 Supplies or services.**

(a)(3) Contract delivery or performance schedules must not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and shall not be used as a reference point for contract performance. See 1814.408 for additional information on notices of award.

##### **1811.403-70 Packaging, handling, and transportation.**

(a) NPG 600.1E, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components" provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for the purposes of contractor compliance with the NPG.

##### **1811.404 Contract clauses.**

(a)(2) FAR 52.211-8, Time of Delivery, Alternates II and III, must not be used in NASA contracts.

(3) FAR 52.211-9, Desired and Required Time of Delivery, Alternates II and III, must not be used in NASA contracts.

##### **1811.404-70 NASA contract clauses.**

The clause at 1852.211-70, Packaging, Handling, and Transportation, must be included in solicitations for contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

#### **Subpart 1811.5--Liquidated Damages**

##### **1811.501 Policy.**

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

#### **Subpart 1811.6--Priorities and Allocations**

##### **1811.602 General.**

(c) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Office of Procurement (Code HK) must coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

##### **1811.603 Procedures.**

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(e)(i) Rated orders may be used by NASA only as provided in Section 700.17 of the DPAS (15 CFR 700.17) and subject to the limitations provided in Section 700.18 of the DPAS (15 CFR 700.18). Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(ii) NASA rated orders may only be assigned a DO rating, unless NASA has obtained a DX rating from the Department of Defense.

(iii) The following program identification symbols may be used on NASA rated contracts and purchase orders for equipment and services that support authorized programs (see Schedule I of the DPAS):

- A1 - Aircraft
- A2 - Missiles
- A3 - Ships
- A5 - Weapons
- A6 - Ammunition
- A7 - Electronic and Communications Equipment
- B1 - Military Building Supplies
- B8 - Production Equipment (For Contractor's Account)
- B9 - Production Equipment (Government-Owned)
- C2 - Construction
- C3 - Maintenance, Repair, and Operating Supplies for Facilities
- C9 - Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement (Code HK).

**PART 1812**  
**ACQUISITION OF COMMERCIAL ITEMS**

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**PART 1812**  
**ACQUISITION OF COMMERCIAL ITEMS**

**Subpart 1812.1--Acquisition of Commercial Items--General**

**1812.102 Applicability.**

(c) For the acquisition of commercial items of any value, the MidRange procedures described in NFS Part 1871 may be used to the extent they are consistent and compliant with FAR Part 12 and NFS Part 1812. Unless specifically stated, in any conflict between these parts the descending order of precedence is FAR Part 12, Part 1812, and Part 1871.

**Subpart 1812.3--Solicitation Provisions and Contract Clauses  
for the Acquisition of Commercial Items**

**1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.204-74, Central Contractor Registration.

(B) 1852.214-71, Grouping for Aggregate Award.



- (C) 1852.214-72, Full Quantities.
- (D) 1852.215-84, Ombudsman.
- (E) 1852.219-75, Small Business Subcontracting Reporting.
- (F) 1852.219-76, NASA 8 Percent Goal.
- (G) 1852.223-70, Safety and Health.
- (H) 1852.223-71, Frequency Authorization.
- (I) 1852.223-72, Safety and Health (Short Form).
- (J) 1852.223-73, Safety and Health Plan.
- (K) 1852.223-75, Major Breach of Safety and Security.
- (L) 1852.228-72, Cross-Waiver of Liability for Space Shuttle Services.
- (M) 1852.228-76, Cross-Waiver of Liability for Space Station Activities.
- (N) 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.
- (O) 1852.246-72, Material Inspection and Receiving Report.

(ii) No other provisions and clauses prescribed in the NFS or center documents shall be used in acquisitions of commercial items, except as permitted by FAR 12.302.

**1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(c) The Assistant Administrator for Procurement (Code HS) is the approval authority for waivers. Requests shall be prepared and submitted in accordance with 1801.471.

**Subpart 1812.4--Unique Requirements Regarding Terms and  
Conditions for Commercial Items**

**1812.404 Warranties.**

(b) In acquisitions under the Simplified Acquisition Threshold specified in FAR Part 13, no express warranty should be required other than the offeror's commercial warranty.

**Subpart 1812.70--Commercial Space Hardware or Services**

**1812.7000 Prohibition on guaranteed customer bases for new commercial space hardware or services.**

Public Law 102-139, title III, Section 2459d, prohibits NASA from awarding a contract with an expected duration of more than one year if the primary effect of the contract is to provide a guaranteed customer base for, or establish an anchor tenancy in, new commercial space hardware or services. Exception to this prohibition may be authorized only by an appropriations Act specifically providing otherwise.

## **CONTRACTING BY NEGOTIATION**

### **Subpart 1815. 2--Solicitation and Receipt of Proposals and Information**

#### **1815.201 Exchanges with industry before receipt of proposals.**

(c) (6) (A) Except for acquisitions described in 1815.300-70(b) contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed \$1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A-119. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the formal RFP when practicable.

(F) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

(f)(i) Upon release of the formal RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the contracting officer or other authorized representative. This procedure is commonly known as a "blackout notice" and shall not be imposed before release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(ii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

#### **1815.203 Requests for proposals.**

**1815.203-70 Installation reviews.**

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review and approve the RFP prior to issuance.

**1815.203-71 Headquarters reviews.**

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Assistant Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

**1815.203-72 Risk management.**

In all RFPs and RFOs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

**1815.204 Contract format.**

**1815.204-2 Part I - The Schedule.**

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

**1815.204-5 Part IV - Representations and instructions.**

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

**1815.204-70 Page limitations.**

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12-point

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type. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will agree on page limitations for

(b) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(c) Affect a significant number of points to induce realistic pricing.

(d) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardware Development	Point Adjustment
+/- 5 percent	+/- 30 percent	0
+/- 6 to 10 percent	+/- 31 to 40 percent	-50
+/- 11 to 15 percent	+/- 41 to 50 percent	-100
+/- 16 to 20 percent	+/- 51 to 60 percent	-150
+/- 21 to 30 percent	+/- 61 to 70 percent	-200
+/- more than 30 percent	+/- more than 70 percent	-300

(a)(4) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

#### **1815.305-70 Identification of unacceptable proposals.**

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

#### **1815.305-71 Evaluation of a single proposal.**

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to:

(1) Award without discussions provided the contracting officer determines that adequate price competition exists (see FAR 15.403-1(c)(1)(ii));

(2) Award after negotiating an acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403-1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.305-71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

**1815.306 Exchanges with offerors after receipt of proposals.**

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(d)(3)(A) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic, or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a "bottom line " is necessary.

(B) The contracting officer shall discuss contract terms and conditions so that a "model" contract can be sent to each offeror with the request for final proposal revisions. If the solicitation allows, any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's "model" contract. If the offeror declines to include these strengths in its "model" contract, the Government evaluators should reconsider their characterization as strengths.

(e)(1) In no case shall the contracting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other offerors an opportunity to propose against the relaxed requirements.

**1815.307 Proposal revisions.**

(b)(i) The request for final proposal revisions (FPRs) shall also:

(A) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(B) Require offerors to complete and execute the "model" contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(C) Caution offerors against unsubstantiated changes to their proposals; and

(D) Establish a page limit for FPRs.

(ii) Approval of the Assistant Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of \$50 million or more. Approval of the procurement officer is required for all other acquisitions.

(iii) Proposals are rescored based on FPR evaluations. Scoring changes between initial and FPRs shall be clearly traceable.

**1815.308 Source selection decision.**

(1) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings

**1815.504 Award to successful offeror.**

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed.

**1815.506 Postaward debriefing of offerors.**

**1815.506-70 Debriefing of offerors - Major System acquisitions.**

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in Part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Assistant Administrator for Procurement (Code HS).

**Subpart 1815.6--Unsolicited Proposals**

**1815.602 Policy.**

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

**1815.604 Agency points of contact.**

(a) Information titled "Guidance for the Preparation and Submission of Unsolicited Proposals" is available on the Internet at <http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html>. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

**1815.606 Agency procedures.**

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of



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contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

#### **1815.606-70 Relationship of unsolicited proposals to NRAs.**

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016-71), provided that the evaluating office can either:

- (a) State that the proposal is not at a competitive disadvantage, or
- (b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

#### **1815.609 Limited use of data.**

#### **1815.609-70 Limited use of proposals.**

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207-70.

#### **1815.670 Foreign proposals.**

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

### **Subpart 1815.70--Ombudsman**

#### **1815.7001 NASA Ombudsman Program.**

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Advocacy Programs.

#### **1815.7002 Synopses of solicitations and contracts.**

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215-84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

#### **1815.7003 Contract clause.**

The contracting officer shall insert a clause substantially the same as the one at 1852.215-84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

**PART 1816**  
**TYPES OF CONTRACTS**

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## **PART 1816**

### **TYPES OF CONTRACTS**

#### **Subpart 1816.1--Selecting Contract Types**

##### **1816.104 Factors in selecting contract types.**

###### **1816.104-70 Contract type for performance-based contracting (PBC).**

(a) PBC is defined in FAR 2.101 and discussed in FAR 37.6. Although FAR Part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBC specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A PBC is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts are not PBC.

#### **Subpart 1816.2--Fixed-Price Contracts**

##### **1816.202 Firm-fixed-price contracts.**

###### **1816.202-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

##### **1816.203 Fixed-price contracts with economic price adjustment.**

###### **1816.203-4 Contract clauses.**

(a) In addition to the approval requirements in the prescriptions at FAR 52.216-2 through 52.216-4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at 52.216-4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HK, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

#### **Subpart 1816.3--Cost-Reimbursement Contracts**

provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee Payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

#### **1816.406 Contract clauses.**

##### **1816.406-70 NASA contract clauses.**

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award-fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

#### **Subpart 1816.5--Indefinite-Delivery Contracts**

##### **1816.504 Indefinite quantity contracts.**

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See 1815.7003.

##### **1816.505 Ordering.**

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

**1816.505-70 Task ordering.**

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843.70.

**1816.506-70 NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (see NPG 9501.2, NASA Contractor Financial Management Reporting System), use the clause with its Alternate I.

**Subpart 1816.6--Time-and-Materials, Labor-Hour, and Letter Contracts**

**1816.603 Letter contracts.**

**1816.603-2 Application.**

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

**1816.603-370 Approvals.**

(a)(1) The approval authority to issue a letter contract is --

(i) The Assistant Administrator for Procurement when the estimated value of the definitized contract is equal to or greater than the Master Buy Plan (MBP) submission threshold of 1807.7101;

(ii) The procurement officer when the estimated value of the definitized contract is below the MBP submission threshold; and

(iii) The Assistant Administrator for Procurement for any modification of an undefinitized letter contract approved by the procurement officer that increases the estimated value of the definitized contract to an amount equal to or above the MBP submission threshold. This approval must be obtained prior to issuing the modification.

(2) The procurement officer must sign all requests for approval by the Assistant Administrator for Procurement and submit them to Code HS.

(b) All requests for authority to issue a letter contract must include the following:

- (1) Contractor name and address.
- (2) Place of performance.
- (3) Contract number, including modification number, if applicable.
- (4) Brief description of the work or services to be performed.
- (5) Performance period or delivery schedule for both the letter contract and definitized contract.
- (6) Estimated value of the work authorized by the letter contract.
- (7) Estimated value of the definitized contract.
- (8) Contract type of the definitized contract.
- (9) A statement that the definitized contract will contain all required clauses or identification of approved specific clause deviations.
- (10) Complete justification of the necessity for the letter contract, including the advantages to the Government and a description of the efforts to avoid its issuance or to minimize its scope.
- (11) The definitization schedule described in FAR 16.603-2(c) expected to be negotiated with the contractor.

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## **PART 1817**

### **SPECIAL CONTRACTING METHODS**

#### **Subpart 1817.1--Multiyear Contracting**

##### **1817.105 Policy.**

##### **1817.105-1 Uses.**

(b) The Assistant Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105-1(b) is met by the proposed use of multiyear contracting.

#### **Subpart 1817.2--Options**

##### **1817.200 Scope of subpart.**

FAR Subpart 17.2 applies to all NASA contracts.

##### **1817.203 Solicitations.**

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

##### **1817.204 Contracts.**

(e) (i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type, except when the time needed to complete system development or hardware production is greater than five years.

(ii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five years and evidence that the extended years can be reasonably priced.

##### **1817.206 Evaluation.**

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.



**1817.207 Exercise of options.**

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Assistant Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Assistant Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

**1817.208 Solicitation provisions and contract clauses.**

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217-5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

**Subpart 1817.4--Leader Company Contracting**

**1817.401 General.**

It is NASA policy not to use the leader company contracting technique.

**Subpart 1817.5--Interagency Acquisitions Under the Economy Act**

**1817.503 Determinations and findings requirements.**

(a) See 1817.72 for additional information on interagency transaction requirements.

(a)(2) Current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

(c) The Assistant Administrator for Procurement as the agency senior procurement executive will approve all D&F's for a servicing agency not covered by the Federal Acquisition Regulations. This approval may not be delegated below the senior procurement executive level.

**1817.504 Ordering procedures.**

(b)(4) All payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient.

**Subpart 1817.70 --Acquisitions with Military Departments**

**1817.7000 Scope of subpart.**

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or services by NASA from or through the Military Departments.

**1817.7001 Authorization and policy.**

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military

Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

**1817.7002 NASA-Defense Purchase Request and acceptance.**

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting --

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) Include a provision in accordance with 1817.504(b)(4).

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-72.

**1817.7002-1 Acceptance by Military Department.**

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

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(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

**1817.7002-2 Changes in estimated total prices.**

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**SMALL BUSINESS PROGRAMS**

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### **PART 1819** **SMALL BUSINESS PROGRAMS**

#### **1819.001 Definitions.**

“**High-Tech**” as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

#### **Subpart 1819.2--Policies**

**1819.201 General policy.**

(a)(i) NASA is committed to providing to small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, service-disabled veteran-owned small business, HUBZone, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has the following statutory goals based on the total value of prime and subcontract awards:

(A) Under Public Laws 101-144, 101-507, and 102-389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

(c) The Assistant Administrator for Small and Disadvantaged Business Utilization (Code K) is the Agency official responsible for carrying out the duties in FAR 19.201(c).

(d)(i) The center director shall designate a qualified individual in the contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. The small business specialist shall also perform other functions specifically set forth in this section 1819.201 or that the procurement officer may prescribe, with the concurrence of the Assistant Administrator for Small and Disadvantaged Business Utilization, for implementing the Small Business Program. When the center director considers that the volume of acquisitions or the functions relating to acquisitions at the center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(ii) Small business specialists appointed under paragraph (d)(i) of this section shall perform the following duties, as the procurement officer determines appropriate to the installation:

(A) Maintain a program designed to locate capable small business sources, including those located in labor surplus areas, for current and future acquisitions.

(B) Coordinate inquiries and requests for advice from small business concerns on acquisition matters.

(C) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including making recommendations for initiation of set-asides (see FAR 19.5 and 19.8) and for taking action in accordance with FAR 19.506(b) and 1819.502-70. Participate and provide input early in the acquisition planning phase of proposed acquisitions, including acquisition strategy meetings.

(D) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, work with appropriate technical and

contracting personnel to ensure that necessary specifications or drawings for current or future acquisitions will be available.

(E) Review acquisitions for possible breakout of items suitable for acquisition from small business concerns.

(F) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for such assistance, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(G) Participate in responsibility determinations (see FAR 9.103) when small business concerns are involved.

(H) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705-4).

(I) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(J) Ensure that participation of small business concerns is accurately reported.

(K) Make available to SBA copies of solicitations when requested.

(L) Act as liaison between contracting officers and SBA area offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved.

(M) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(N) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, assist that concern, upon its request, in understanding such requirements for future awards.

(O) Advise center personnel, as necessary, on new Governmentwide and Agency-approved small business programs and initiatives.

(f)(1) The NASA Ombudsman, the Director of the Contract Management Division (Code HK), is the designated official for determining whether the use of the SDB mechanism in FAR Subpart 19.11 has resulted in an undue burden on non-SDB firms in the Department of Commerce designated NAICS Major Groups, or is otherwise inappropriate.

### **Subpart 1819.3--Determination of Small Business Status for Small Business Programs**

#### **1819.302 Protesting a small business representation.**

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

### **Subpart 1819.5--Set-Asides for Small Business**

**1819.502 Setting aside acquisitions.**

**1819.502-70 Non-initiation of set-asides.**

(a) All cases involving the non-initiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a decision by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review.

(b) If the small business specialist recommends that an individual acquisition or a class of acquisitions, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) When an SBA representative is assigned and available and the contracting officer disapproves the small business specialist's recommendation, the contracting officer shall promptly refer the case to the SBA representative for review. The small business specialist shall take no further appeal action. The SBA representative must either concur with the decision or appeal the case to the procurement officer under FAR 19.505. If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement (HS).

(d) When an SBA representative is not assigned or available and the contracting officer disapproves the small business specialist's recommendation, the small business specialist may appeal in writing to the procurement officer. The procurement officer's decision shall be final. The contracting officer shall place a memorandum of the procurement officer's decision in the contract file. If the procurement officer's decision approves the contracting officer's action, the small business specialist shall forward complete documentation of the case to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

(e) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconcurrence in a recommended set-aside action.

**1819.502-3 Partial set-asides.**

**1819.502-370 NASA Reporting Requirements.**

The contracting officer shall separately report, in accordance with Subpart 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

**1819.505 Rejecting Small Business Administration recommendations.**

See 1819.502-70.

**1819.506 Withdrawing or modifying small business set-asides.**

(b) If an SBA representative is not assigned or available, and the small business specialist disagrees with the contracting officer's written decision of withdrawal or modification of a set-aside determination, the small business specialist may appeal to the procurement officer in accordance with the procedures in 1819.502-70(d).

**Subpart 1819.6--Certificates of Competency and Determinations of Responsibility**



**1819.602 Procedures.**

**1819.602-1 Referral.**

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

**1819.602-3 Resolving differences between the agency and the Small Business Administration.**

**1819.602-370 NASA Procedures.**

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement (Code HS) on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Code HS of the final decision in the case.

(b) If the Office of Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, Code HS shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's recommended appeal action, the Assistant Administrator for Procurement shall forward the appeal through the Office of Small and Disadvantaged Business Utilization (Code K) to SBA Headquarters.

**Subpart 1819.7--The Small Business Subcontracting Program**

**1819.705-2 Determining the need for a subcontracting plan.**

(d) Solicitations for competitive negotiated acquisitions shall require proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

**1819.705-4 Reviewing the subcontracting plan.**

**1819.705-470 Acquisition-specific subcontracting goals.**

Section 1819.201 addresses Agencywide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705-4 and 1819.7002(b), and not on the basis of an Agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. The methods outlined in NASA Policy Directive (NPD) 5000.2, Uniform

Methodology for Determination of Small Disadvantaged Subcontracting Goals, may also be useful in establishing reasonable subcontracting goals for small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone, and women-owned small business concerns.

**1819.708 Contract clauses.**

(b)(1) The contracting officer shall use the clause at FAR 52.219-9 with its Alternate II when contracting by negotiation.

**1819.708-70 NASA solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 1852.219-73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.219-75, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial plan.

**Subpart 1819.8--Contracting with the Small Business Administration  
(The 8(a) Program)**

**1819.804 Evaluation, offering, and acceptance.**

**1819.804-1 Agency evaluation.**

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

**Subpart 1819.10--Small Business Competitiveness Demonstration Program**

**1819.1005 Applicability.**

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

<b>NAICS Code</b>	<b>Industry Category</b>
334111	Electronic Computer Manufacturing
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing
334613	Magnetic and Optical Recording Media Manufacturing
334119	Other Computer Peripheral Equipment Manufacturing
33422	Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
54171	Research and Development in the Physical Engineering and Life Sciences

336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing
333314	Optical Instrument and Lens Manufacturing
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
51421	Data Processing Services
541519	Other Computer Related Services

### **Subpart 1819.70--NASA 8 Percent Goal**

#### **1819.7000 General.**

Public Laws 101-144, 101-507, and 102-389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8 percent of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

#### **1819.7002 Contracting officer responsibility.**

(a) Contracting officers must seek out as potential sources entities identified in 1819.7001 and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed \$50 million, including options. The methodology may be used for lesser value acquisitions.

#### **1819.7003 Contract clause.**

The contracting officer shall insert the clause at 1852.219-76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

### **Subpart 1819.71--NASA Rural Area Small Business Plan**

#### **1819.7101 Definition.**

"**Rural area**" means a county with a population of fewer than twenty thousand individuals.

#### **1819.7102 General.**

Pursuant to Public Law 100-590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small

business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

**1819.7103 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed \$500,000 (\$1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of

**PART 1822**  
**APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

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**PART 1822**  
**APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**1822.000-70 Scope of part.**

(a) Contracting officers shall consult with the installation labor relations advisor or designee when taking any of the actions prescribed or authorized in FAR Part 22 or NFS Part 1822.

(b) Proposed actions having a substantial impact on the activities of NASA or other Government agencies shall be approved by the Headquarters Contractor Industrial Relations Office (Code JR).

**Subpart 1822.1--Basic Labor Policies**

**1822.101 Labor relations.**

**1822.101-1 General.**

(d) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall:

(i) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(ii) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(iii) Consider taking the actions described in FAR 22.101-4.

(e) Programs or requirements that result in contracts in excess of the simplified acquisition threshold shall require contractors to notify NASA of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.

**1822.101-3 Reporting labor disputes.**

Reports of potential or actual labor disputes affecting NASA acquisitions, operations, or services shall be submitted to the Headquarters Contractor Industrial Relations Office (Code JR). These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made to provide appropriate additional information. Reports shall describe at a minimum:

(1) The nature of the potential or actual dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and their relationship to the total acquisition program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative resources to furnish the items involved within the time required;

(5) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

**1822.101-4 Removal of items from contractors' facilities affected by work stoppages.**

(a)(3) The contracting officer shall obtain approval from Code JR for any contemplated action.

**1822.101-70 Admission of labor representatives to contract sites.**

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

**1822.103 Overtime.**

**1822.103-4 Approvals.**

(a) The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

**1822.103-5 Contract clauses.**

(a) See 1822.101-1(e).

**Subpart 1822.3--Contract Work Hours and Safety Standards Act**

**1822.302 Liquidated damages and overtime pay.**

(c) The Director of the Headquarters Contractor Industrial Relations Office (Code JR) is the agency head designee.

(d) Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director of Code JR.

**Subpart 1822.4--Labor Standards for Contracts Involving Construction**

**1822.400-70 Contacts with the Department of Labor.**

All contacts with the Department of Labor required by FAR Subpart 22.4, except for wage determinations, shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JR). Contracting officers shall submit all pertinent information to Code JR in support of Code JR for contacts. For wage determinations, contracting officers shall submit all requests directly to Goddard Space Flight Center, Contractor Industrial Relations Office - GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC).

**1822.404-3 Procedures for requesting wage determinations.**

Contracting officers shall submit requests for project wage determinations to GSFC at least 55 days (70 days if possible) before issuing the solicitation.

**1822.406-8 Investigations.**

(a) The contracting officer is responsible for conducting investigations of labor violations relative to contracts under their cognizance.

(d) Reports of violations shall be sent to Code JR.

**1822.406-9 Withholding from or suspension of contract payments.**

(c)(4) Code JR shall determine the disposal of funds.

**1822.406-13 Semiannual enforcement reports.**

Procurement officers shall submit semiannual enforcement data within 20 days after the end of the specified reporting periods to the Headquarters Office of Procurement (Code HK). Negative statements are required.

**Subpart 1822.6--Walsh-Healey Public Contracts Act**

**1822.604 Exemptions.**

**1822.604-2 Regulatory exemptions.**

(b) Requests for exemptions shall be submitted in writing through the contracting officer to the Headquarters Contractor Industrial Relations Office (Code JR).



**Subpart 1822.8--Equal Employment Opportunity**

**1822.804 Affirmative action programs.**

**1822.804-2 Construction.**

(b) The Headquarters Office of Procurement (Code HK) will furnish each procurement officer the listing.

**1822.807 Exemptions.**

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall be sent to the Headquarters Office of Procurement (Code HS).

**1822.810 Solicitation provisions and contract clauses.**

(e) If an offeror completes a negative representation under FAR 52.222-22, the contracting officer shall obtain the information required by FAR 52.222-26(b)(7) within 30 days of contract award. This information shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4).

**Subpart 1822.10--Service Contract Act of 1965**

**1822.1001 Definitions.**

"Agency labor advisor" is the Director of the Headquarters Contractor Industrial Relations Office (Code JR). All contacts with other agencies required by FAR Subpart 22.10 shall be conducted through Code JR. Contracting officers shall submit all pertinent information to Code JR in support of the required contacts.

**1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).**

**1822.1008-270 Additional information for the preparation of SF 98/98a.**

The information listed below by item number shall be furnished, in addition to that required by the SF 98/98a:

(a) **Item 6.** Insert on the far left side of the block the code identifying the type of proposed action:

<b>Code</b>	<b>Proposed Action</b>
<b>I</b>	New contract (use <u>only</u> when services are not presently being performed).
<b>II</b>	Recompetition of services.
<b>III</b>	Contract modifications affecting the scope of the work.
<b>IV</b>	Extension of contract performance through exercise of an option or otherwise.

V	Other. When a multiple year contract (funding is not subject to annual appropriation) is to be entered into, specify "multiple year R&D funded" on the SF 98.
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(b) **Item 8.**

(1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If no wage determination is available for the particular contract, insert "None" in Item 8.b.

(c) **Item 10.** Add the solicitation number.

(d) **Item 12.**

(1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this subsection), list only the classes of work that the incumbent indicates are "nonexempt."

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) **Item 13.** If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) **Item 14.** Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

**1822.1008-7 Required time of submission of notice.**

(a) Contracting officers shall submit the notices to Goddard Space Flight Center, Contract Industrial Relations Office - GSFC, Code 201, Greenbelt, Maryland 20771 (GSFC) at least 70 days before initiating the associated contract actions.

(b) When the circumstances in FAR 22.1008-7(b) apply, contracting officers shall submit the required notices to GSFC at least 40 days before initiating the associated contract actions.

(c) Contracting officers shall contact GSFC before initiating any action when the circumstances in FAR 22.1008-7(c) and (d) apply.

**Subpart 1822.13--Special Disabled Veterans, Veterans of the Vietnam ERA,  
and Other Eligible Veterans**

**1822.1305 Waivers.**

(c) Requests for waivers shall be submitted to the Assistant Administrator for Equal Opportunity Programs (Code E).

**1822.1308 Complaint procedures.**

Contracting officers shall submit all complaints to the Assistant Administrator for Equal Opportunity Programs (Code E).

**Subpart 1822.14--Employment of Workers with Disabilities**

**1822.1403 Waivers.**

(c) Requests for waivers shall be submitted to the Assistant Administrator for Equal Opportunity Programs (Code E).

**1822.1406 Complaint procedures.**

Contracting officers shall submit all complaints to the Assistant Administrator for Equal Opportunity Programs (Code E).

**Subpart 1822.15--Prohibition of Acquisition of Products Produced by Forced or  
Indentured Child Labor**

**1822.1503 Procedures for acquiring end products on the List of Products Requiring  
Contractor Certification as to Forced or Indentured Child Labor.**

(e) All investigations under FAR Subpart 22.15 shall be referred to NASA's Office of  
Inspector General.

**PART 1823**  
**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY**  
**TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

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**PART 1823**  
**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY**  
**TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 1823.2--Energy and Water Efficiency and Renewable Energy**

1823.203 Energy-efficient products.

Responsibility, policy and procedures for NASA's implementation of FAR 23.203, including cost-effectiveness, are described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices."

### **Subpart 1823.3--Hazardous Material Identification and Material Safety Data**

#### **1823.370 Acquisition of potentially hazardous items from or through another Government agency.**

When acquiring supplies or services from or through another Government agency (e.g., see FAR Part 8 and FAR Subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR Subpart 23.3.

### **Subpart 1823.4--Use of Recovered Materials**

#### **1823.404 Agency affirmative procurement programs.**

NASA's affirmative procurement program is described in the Affirmative Procurement Plan for Environmentally Preferable Products (NPG 8830.1).

### **Subpart 1823.5--Drug-Free Workplace**

#### **1823.570 Drug-and alcohol-free workforce.**

##### **1823.570-1 Scope.**

Sections 1823.570 to 1823.570-4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

##### **1823.570-2 Definitions.**

As used in this subpart **employee** and **controlled substance** are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570-4 and the clause at 1852.223-74.

**"Employee in a sensitive position"** means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at 1852.246-70. The term also includes any applicant who is interviewed for a position described in this paragraph.

**"Use, in violation of applicable law or Federal regulation, of alcohol"** includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An

individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

**1823.570-3 Contract clause.**

The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see FAR Parts 2 and 12).

**1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.**

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223-74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74;  
or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

**Subpart 1823.7--Contracting for Environmentally Preferable Products and Services**

**1823.703 Policy.**

Responsibility, policy and procedures for NASA's implementation of FAR 23.703 is described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices".

**Subpart 1823.70--Safety and Health**

**1823.7001 NASA solicitation provisions and contract clauses.**

(a) The clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately

addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract. Insert the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223-70.

(d) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at 1852.223-70, Safety and Health, the contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form).

### **Subpart 1823.71--Frequency Authorization**

#### **1823.7101 Contract clause.**

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

#### **1823.7102 Procedures.**

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.



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**PART 1825  
FOREIGN ACQUISITION**

**1825.003 Definitions.**

**1825.003-70 NASA definitions.**

**"Canadian end product"**, for an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.401 applies.

#### **Subpart 1825.1--Buy American Act--Supplies**

##### **1825.103 Exceptions.**

(a)(i) The procurement officer shall send proposed public interest determinations to the Assistant Administrator for Procurement (Code HS) for approval.

(ii) The Assistant Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.003-70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

#### **Subpart 1825.4--Trade Agreements**

##### **1825.400 Scope of subpart.**

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of \$2,500.

#### **Subpart 1825.9--Customs and Duties**

##### **1825.901 Policy.**

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

##### **1825.903 Exempted supplies.**

(a) Through delegation from the Assistant Administrator for Procurement, Procurement Officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c)

(<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html> - page1). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports (<http://www.customs.ustreas.gov/location/ports/index.htm>) or from NASA Headquarters' forms

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library ([https://extranet.hq.nasa.gov/nef/user/form\\_search.cfm](https://extranet.hq.nasa.gov/nef/user/form_search.cfm)). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

**Subpart 1828.3--Insurance**

**1828.307 Insurance under cost-reimbursement contracts.**

**1828.307-1 Group insurance plans.**

- (a) The procurement officer is the approval authority.

**1828.307-2 Liability.**

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

- (a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

- (b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Assistant Administrator for Procurement (Code HS) is the approval authority.

**1828.307-70 Insurance of industrial facilities.**

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307-2.

**1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

**1828.311-1 Contract clause.**

The contracting officer must insert the clause at FAR 52.228-7, Insurance-Liability to Third Persons, as prescribed in FAR 28.311-1 unless --

- (a) Waived by the procurement officer: or
- (b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

**1828.311-2 Agency solicitation provisions and contract clauses.**

**1828.311-270 NASA solicitation provisions and contract clauses.**

(a) The contracting officer must insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228-80, Insurance--Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at 1852.228-81, Insurance -- Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228-82, Insurance--Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

#### **1828.370 Fixed-price contract clauses.**

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

#### **1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.**

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the

agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of \$100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is

defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of \$100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate its application to that particular launch.

(d) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of \$100,000 or more when the work is to be performed involves "Protected Space Operations" (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extensions, to existing contracts under \$100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

**1828.372 Clause for minimum insurance coverage.**

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228-75, Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

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**PART 1829  
TAXES**

**Subpart 1829.1--General**

**1829.101 Resolving tax problems.**

(a)(i) The Headquarters Office of the General Counsel (Code G) is the designated legal counsel for all external contacts on FAR Part 29 tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to Code G through the installation's Office of Chief Counsel. The following material, as applicable, shall be forwarded to Code G with a copy to the Assistant Administrator for Procurement (Code HS):

- (A) A comprehensive statement of pertinent facts, including documents and correspondence.
- (B) A copy of the contract.
- (C) A thorough review of the legal issues involved and recommended action.
- (D) If appropriate, a statement of the problem's effects on procurement policies and procedures, with recommendations.

**Subpart 1829.2--Federal Excise Taxes**

**1829.203 Other Federal tax exemptions.**

**1829.203-70 NASA Federal tax exemptions.**

(a) The Assistant Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Headquarters Office of Procurement (Code HS).



(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) The contracting officer shall post a copy of the permit for inspection.

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**PART 1830**  
**COST ACCOUNTING STANDARDS ADMINISTRATION**

**Subpart 1830.2--CAS Program Requirements**

**1830.201-5 Waiver.**

(a)(2) The Assistant Administrator for Procurement is the only individual authorized to approve CAS waivers. Requests for waivers that meet the conditions in FAR 30.201-5(b) must be submitted to the Headquarters Office of Procurement (Code HK) at least 30 days before the anticipated contract award date.

(e) The Assistant Administrator for Procurement will submit NASA's report to the CAS Board.

**Subpart 1830.70--Facilities Capital Employed for  
Facilities in Use and for Facilities Under Construction**

**1830.7001 Facilities capital employed for facilities in use.**

**1830.7001-1 Contract facilities capital estimates.**

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

**1830.7001-2 DD Form 1861 completion instructions.**

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for that year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

**1830.7001-3 Preaward FCCOM applications.**

Apply FCCOM in establishing cost and price objectives as follows:

(a) **Cost objective.** Use the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) **Profit/fee objective.** Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

**1830.7001-4 Postaward FCCOM applications.**

**(a) Interim billings based on costs incurred.**

(1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

**(b) Final settlements.**

(1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

**1830.7002 Facilities capital employed for facilities under construction.**

**1830.7002-1 Definitions.**

(a) **"Cost of money rate"** is either --

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92-41 (85 Stat 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) **“Representative investment”** is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

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**PART 1832**  
**CONTRACT FINANCING**

**1832.006-2 Definition.**

The Assistant Administrator for Procurement is the Agency remedy coordination official.

**1832.007 Contract financing payments.**

(a)(1) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30<sup>th</sup> day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the Federal Register (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

**Subpart 1832.1--Non-Commercial Item Purchase Financing**

**1832.111 Contract clauses for non-commercial purchases.**

**1832.111-70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

#### **Subpart 1832.2--Commercial Item Purchase Financing**

##### **1832.202-1 Policy.**

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts (see 1832.402).

##### **1832.206 Solicitation provisions and contract clauses.**

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232-30.

#### **Subpart 1832.4--Advance Payments for Non-Commercial Items**

##### **1832.402 General.**

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

##### **1832.406 Letters of credit.**

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

##### **1832.407 Interest.**

(d)(1) Advance payments without interest are authorized.

##### **1832.409 Contracting officer action.**

**1832.409-1 Recommendation for approval.**

**1832.409-170 NASA procedure for approval.**

In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

- (a) Name of the cognizant NASA Headquarters program or staff office;
- (b) Name and phone number of the contracting officer or negotiator;
- (c) A copy of the proposed advance payments clause;
- (d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see 1815.404-470);
- (e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

**1832.410 Findings, determination, and authorization.**

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

- (i) In format subparagraph (a)(2), use the phrase "Advance payments (in an amount not to exceed \$..... at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.
- (ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special financial institution account if no special financial institution account is required.
- (iii) Use format subparagraph (a)(6), not (a)(7) or (a)(8).
- (iv) At the end of format paragraph (b), use "is in the public interest."
- (v) In format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

**1832.412 Contract clause.**

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

**1832.412-70 NASA contract clauses.**

When the clause at FAR 52.232-12 or its Alternates II or V are used, insert the clause at 1852.232-70, NASA Modification of FAR 52.232-12.

**Subpart 1832.5--Progress Payments Based on Costs**

**1832.501 General.**

**1832.501-1 Customary progress payment rates.**



(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

**1832.501-2 Unusual progress payments.**

The Director of the Headquarters Office of Procurement, Contract Management Division (Code HK) is the approval authority for the use of unusual progress payments.

**1832.502 Preaward matters.**

**1832.502-2 Contract finance office clearance.**

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502-2, except the Assistant Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502-2(b).

**1832.502-4 Contract clauses.**

**1832.502-470 NASA contract clause.**

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

**1832.503 Postaward matters.**

**1832.503-5 Administration of progress payments.**

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a uniform liquidation rate and under the jurisdiction of the same payment office.

**1832.504 Subcontracts.**

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

**Subpart 1832.7--Contract Funding**

**1832.702 Policy.**

**1832.702-70 NASA policy.**

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met:

- (1) The total value of the contract (including options as defined in FAR Subpart 17.2) is--
  - (i) \$500,000 or more for R&D contracts under which no supplies are deliverable; or
  - (ii) \$1,000,000 or more for all other contracts.
- (2) The period of performance exceeds one year.
- (3) The funds are not available to fund the total contract value fully at award.
- (4) Initial funding of the contract is \$100,000 or more.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions of 1832.702-70(a)(1) through (4) are met and the initial funding of the contract is at least 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) Except for a modification issued to fully fund a contract, incremental funding modifications shall not be issued for amounts totaling less than \$25,000.

(e) Except for a modification issued to close out a contract, modifications deobligating funds shall not be issued for amounts totaling less than \$25,000.

(f) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70(a) through (e). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(g) A class deviation from the conditions set forth in paragraphs 1832.702-70(a) through (e) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. This deviation exists with the understanding that the contracts will be fully funded when funds become available.

**1832.704 Limitation of cost or funds.**

**1832.704-70 Incrementally funded fixed-price contracts.**

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is --

- (1) Allotting additional funds in a specified amount for continued performance;
- (2) Terminating the contract; or
- (3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

**1832.705 Contract clauses.**

**1832.705-2 Clauses for limitation of cost or funds.**

**1832.705-270 NASA clauses for limitation of cost or funds.**

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

**Subpart 1832.9--Prompt Payment**

**1832.908 Contract clauses.**

(c)(2) When the clause at FAR 52.232-25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert "17<sup>th</sup>" in lieu of "30<sup>th</sup>" in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii).

**Subpart 1832.10--Performance-Based Payments**

**1832.1001 Policy.**

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (e.g., proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under \$50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

**1832.1004 Procedures.**

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403-3). When using performance-based payments in competitive negotiated acquisitions under \$50 million, contracting officers should consider the use of alternative evaluation methods, e.g., qualitative evaluation under Mission Suitability or another appropriate factor.

**1832.1005 Contract clauses.**

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232-32 in accordance with 1832.1009.

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under \$50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

**1832.1009 Title.**

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

**Subpart 1832.11--Electronic Funds Transfer**

**1832.1110 Solicitation provision and contract clauses.**

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232-34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

**PART 1833**  
**PROTESTS, DISPUTES, AND APPEALS**

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**PART 1833**  
**PROTESTS, DISPUTES, AND APPEALS**

**Subpart 1833.1--Protests**

**1833.103 Protests to the agency.**

(c) An independent review under the provision at 1852.233-70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy Assistant Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States General Accounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233-70.

**1833.104 Protests to GAO.**

The Assistant Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except (a) and (b) are not required if already accomplished:

(a) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(b) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(c) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iv) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Assistant Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) The Assistant Administrator for Procurement (Code HS) is the approval authority for authorizing contract performance.

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

#### **1833.106 Solicitation provision and contract clause.**

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

#### **1833.106-70 Solicitation provision.**

Contracting officers shall insert the provision at 1852.233-70 in all solicitations.

### **Subpart 1833.2--Disputes and Appeals**

#### **1833.209 Suspected fraudulent claims.**

**PART 1835**  
**RESEARCH AND DEVELOPMENT CONTRACTING**

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**PART 1835**  
**RESEARCH AND DEVELOPMENT CONTRACTING**

**1835.003 Policy.**

See NPG 5800.1, Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

**1835.015 Contracts for research with educational institutions and nonprofit organizations.**

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.

**1835.016 Broad agency announcements.**

(a)(i) The following forms of broad agency announcements (BAAs) are authorized for use:

(A) Announcements of Opportunity (see 1872).

(B) NASA Research Announcements (see 1835.016-71).

(C) Other forms of announcements approved by the Assistant Administrator for Procurement (Code HS).

(ii) Other program announcements, notices, and letters not authorized by paragraph (a)(i) of this section shall not be used to solicit proposals that may result in contracts.

(iii) Draft or final versions of any form of BAA that directly or substantially supports a program subject to NASA Procedures and Guidelines (NPG) 7120.5 shall not be released unless --

(A) All applicable NPG 7120.5 required documentation (see 1804.7301(b)(2)(i)) is current and has been approved (e.g., Formulation Authorization Document, Program Commitment Agreement, Program Plan, or Project Plan); or

(B) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

(c) BAAs may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304.

**1835.016-70 Foreign participation under broad agency announcements (BAAs).**

(a) *Policy.*

(1) NASA seeks the broadest participation in response to broad agency announcements, including foreign proposals or proposals including foreign participation. NASA's policy is to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs). NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are implemented via international agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution under which the parties agree to each bear the cost of discharging their respective responsibilities.

(2) In accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(3) NASA funding may not be used for subcontracted foreign research efforts. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted.

(b) *Procedure.* When a foreign proposal or a U.S. proposal with foreign participation is received in response to a BAA, the NASA sponsoring office shall determine whether the proposal conforms to the no-exchange-of-funds policy in 1835.016-70(a).

(1) If the proposal conforms to the policy in 1835.016-70(a), the NASA sponsoring office shall evaluate the proposal and make selection in accordance with 1835.016-71(d). In conjunction with the notification of successful foreign proposers, the NASA sponsoring office shall notify the Headquarters Office of External Relations, Code I. Code I will negotiate the agreement with the sponsoring foreign agency or funding institution for the proposed participation.

(2) If the proposal does not conform to the policy in 1835.016-70(a), the NASA sponsoring office shall:

- (i) Determine whether the proposal merits further consideration;
- (ii) If further consideration is warranted, refer the proposal to Code I; and
- (iii) Complete the evaluation of the proposal. However no notification of selection, whether tentative or final, shall be made without Code I approval.

(3) Notification to Code I required by paragraphs (b)(1) and (b)(2)(ii) of this section, shall address the items contained in 1872.504(c), and shall be coordinated through the Office of Procurement, Code HS.

**1835.016-71 NASA Research Announcements.**

(a) *Scope.* An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an



RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

(b) *Issuance.*

(1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). In addition, the issuing office shall obtain input from the cognizant offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Input shall also be obtained from the appropriate systems safety organization for NRA's that may involve potentially hazardous operations such as those related to flight and/or mission critical ground systems. The NRA approval authority shall designate the selection official.

(2) The selection official shall assure that the NRA is synopsized prior to issuance in accordance with FAR 5.201. The synopsis shall be brief, and the technical section describing the area of interest should not exceed 50 words.

(3) If a Headquarters-generated NRA may result in awards by a NASA field installation, the issuing office shall notify the installation procurement officer and provide a copy of the NRA.

(4) The selecting official is responsible for the preparation and distribution of the NRA.

(5) NRAs normally shall remain open for at least 90 days.

(c) *Content.* The NRA shall consist of the following sections and items. The entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) "OMB Approval Number 2700-0087" in the upper right corner.

(ii) Title.

(iii) "NASA Research Announcement Soliciting Research Proposals for the Period Ending \_\_\_\_\_".

(iv) NRA number.

(v) Official address for the office issuing the NRA.

(2) *Summary and Supplemental Information.*

(i) The Summary and Supplemental Information should not exceed two pages and shall include:

(A) Title and NRA number.

(B) The following statement concerning safety:

" Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including employees working under NASA award instruments), and (4) high-value equipment and property.

(C) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals.

(D) Address for submitting proposals.

(E) Number of copies required.

(F) Selecting official's title.

(G) Names, addresses, and telephone numbers for the technical and contracting points of contact.

(H) The following statement when the NRA is to be issued before funds are available:

"Funds are not currently available for awards under this NRA. The Government's obligation to make award(s) is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA."

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(3) *Technical Description.* The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) *Instructions for Responding to NASA Research Announcements.* The NRA shall contain instructions as stated in 1852.235-72 (see 1835.070(c)).

(d) *Receipt of proposals, evaluation, and selection.*

(1) Proposals shall be protected as provided in FAR 15.608, FAR 15.609, and 1815.609-70.

(2) Late proposals and modifications shall be treated in accordance with 1815.208.

(3) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation by an in-house specialist, a specialist outside NASA, or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in 1815.207. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror only for the purpose of clarification (as defined in FAR 15.306), or to understand the meaning of some aspect of the proposal that is not clear, or to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(4) Competitive range determinations shall not be made, and final proposal revisions shall not be requested.

(5) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, the selecting official may request revisions from the offeror or request the contracting officer to implement them during negotiations with the successful offeror(s). The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.306(e)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(6) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

**PART 1837**  
**SERVICE CONTRACTING**

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**PART 1837**  
**SERVICE CONTRACTING**

**Subpart 1837.1--Service Contracts--General**

**1837.101 Definitions.**

**"Pension portability"** means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

**1837.104 Personal services contracts.**

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

**1837.110 Solicitation provisions and contract clauses.**

**1837.110-70 NASA solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

(c) The contracting officer shall insert the provision 1852.237-72, Identification of Uncompensated Overtime, in cost reimbursement contracts expected to exceed \$1, 000,000.

**1837.170 Pension portability.**

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237-71, Pension Portability, (see 1837.110-70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

**Subpart 1837.2--Advisory and Assistance Services**

**1837.203 Policy.**

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

**1837.204 Guidelines for determining availability of personnel.**

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Assistant Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

major program cutbacks or expansions, changes in locations of major programs, and sizable new acquisitions should be considered in the assessment.

(b) A summary, including a negative summary, of the Center's assessment shall be submitted by the procurement officer to the Headquarters Office of Procurement (Code HK) by not later than January 15 and June 15 of the fiscal year. The summary shall include--

- (1) A description of the change in work requirements or delegation pattern;
- (2) The estimated duration of the impact;
- (3) The results of discussions with affected DOD contract administration offices including agreement and disagreements on the predicted impact on DOD in terms of changes in manpower requirements or other costs; and
- (4) Any other significant impact on DOD or NASA resources or contract performance risk.

**1842.170 Assignment of NASA personnel at contractor plants.**

(a)(1) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Assistant Administrator for Procurement (Code HS). The following supporting information shall be forwarded with the request to make the assignment:

- (i) A statement of the special circumstances that necessitate the assignment.
- (ii) The contract administration services to be performed.
- (iii) A summary of any discussions held with the cognizant contract administration organization.
- (iv) A staffing plan covering three years or such shorter period as may be appropriate.

(2) The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.

(c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

**Subpart 1842.2--Contract Administration Services**

**1842.202 Assignment of contract administration.**

(b) *Withholding normal functions.*

(i) The following functions are normally retained by the contracting office.

(A) Approval of the final voucher (FAR 42.302(a)(7)).

(B) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(C) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(D) Contract payment (FAR 42.302(a)(13)).

(E) Execution of supplemental agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(F) Execution of supplemental agreements definitizing change orders (see FAR 42.302(b)(1)).

(G) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(H) Consent to placement of subcontracts under FAR 42.302(a)(51). (See 1844.202-1(a)).

(d) *Transmittal and documentation.* In addition to the instructions at FAR 42.202(d)(1) through (4), contracting officers shall --

(i) Send delegations to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(ii) At time of contract award, prepare and forward NASA Form 1430, Letter of Contract Administration Delegation, General, to the contract administration office. NASA Form 1430A, Letter of Contract Administration, Special Instructions, will supplement the NASA Form 1430, to modify previously delegated functions and provide additional or particular information considered necessary to ensure clear understanding of all delegated functions.

(iii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 or 1430A. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or rejected by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(iv) Use NASA Form 1433, Letter of Audit Delegation, to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(A) *Audit office:* One copy of the contract and three NASA Forms 1433. When the Department of Health and Human Services is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(B) *Contractor:* One NASA Form 1433.

(C) *Cognizant NASA fiscal or financial management office:* One NASA Form 1433.

(v) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement contracts unless all property to be provided is subject to the clause at 1852.245-71, Installation-Accountable Government Property. The clause shall also be included in other types of contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) When approved by the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG), the contracting officer shall insert the clause at 1852.245-74, Contractor Accountable On-Site Government Property, in lieu of the clause at 1852.245-71, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer's written request for approval shall include a determination of costs that will be (1) avoided (e.g., additional costs to the installation's property management systems and staffing) and (2) incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245-75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245-2 with its Alternate II or 52.245-5 with its Alternate I is used.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Installation-Accountable Property and Services, in solicitations and contracts that require performance at the center and authorize contractor use of property within the physical borders of the center.

(i) The contracting officer shall insert the provision at 1852.245-79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(j) The contracting officer shall insert the clause at 1852.245-80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when Government property (real property, commercially available equipment, special test equipment, or special tooling) accountable under another contract(s) is authorized for use.

#### **1845.106-71 Plant reconversion and plant clearance.**

The Assistant Administrator for Procurement (Code HS) is the approval authority for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion or plant clearance until after award.

### **Subpart 1845.3--Providing Government Property to Contractors**

#### **1845.301 Definitions.**

"Facilities", as defined in the FAR, also include real property and commercially available equipment, whether owned or leased by NASA or reimbursed as a cost under the contract.

**"Provide"**, as used in this subpart in such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to permit to be acquired, as in "contractor-acquired property." See FAR 45.101 for definitions of "contractor-acquired property" and "Government-furnished property."

#### **1845.302 Providing facilities.**

##### **1845.302-1 Policy.**

(a) In addition to the exceptions listed in FAR 45.302-1(a), existing NASA-owned facilities (whether contractor acquired or Government furnished) being used by a contractor may be retained for the remainder of the contract period and furnished under any follow-on contract for the same effort if the contracting officer determines that to do so would be in the best interest of the Government, provided that:

- (i) The facilities are required to accomplish the purpose of the contract;
- (ii) The contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302-1(a);
- (iii) Consideration has been given to any alternative uses by Government personnel within the agency, in consultation with the center industrial property officer; and
- (iv) The contracting officer documents the file with a detailed explanation of why continued furnishing of the facilities is in the best interest of the Government.

(a)(4)(A) The procurement officer is designated to make the determinations and findings (D&F) authorizing the use of Government facilities. See 1845.302-71 for D&F format.

(B) The requirements for a D&F and a prospective contractor's written statement asserting inability to obtain facilities are not applicable in the circumstances listed under FAR 45.302-1(d). In these cases, the contracting officer shall document the contract file with the rationale for providing the facilities, including the reason for not requiring the contractor to provide them.

##### **1845.302-2 Facilities contracts.**

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

##### **1845.302-70 Securing approval of facilities projects.**

(a) Pursuant to NMI 7330.1, Delegation of Authority - Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.



**1845.302-71 Determination and findings.**

(a) **Procedure.** Determination and findings (D&F) required under FAR 45.302-1(a)(4) and 1845.302-1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval, concurrence must be obtained from the SEMO to ensure agreement on the use of the Government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity or before adding any new work to the contract that requires additional Government facilities.

(b) **Format.** A sample format follows:

**(Format)**

National Aeronautics and Space  
Administration  
Washington, DC 20546

Determination and Findings

Decision to Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302-1(a)(4).

Findings

1. The [insert the name of the contracting activity] and the contractor (have entered)/(proposed to enter) into Contract No. [insert the contract number] . (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor has demonstrated inability to acquire the facilities; or, even though the contractor is willing and financially able to acquire these facilities for its own account, the contractor has stated that time will not permit making arrangements to obtain timely delivery to meet NASA requirements. If timely delivery is the problem, state when the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Describe the types of facilities to be provided and any variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under \$10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.)
5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer

Date

(End of format)

**Subpart 1845.4--Contractor Use and Rental of Government Property**

**1845.402 Authorizing use of Government production and research property.**

(a)(i) A NASA contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence.

(ii) NASA contracting officers having cognizance over NASA property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

**1845.403 Rental--Use and Charges clause.**

(a) The Center Director is designated as the authority to make the determinations on modified rental rates.

**1845.405 Contracts with foreign governments or international organizations.**

**1845.405-70 NASA procedures.**

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Assistant Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. The Logistics Management Office of the Headquarters Office of Management Systems (Code JG), the Office of General Counsel (Code G), and the Headquarters Office of External Relations (Code I) are required concurrences.

(c) Contracting officers shall forward requests for approval to Code HS, along with a summary of the circumstances involved, including as a minimum --

- (1) The name of the requesting contractor;
  - (2) The number of the contract under which the equipment is controlled;
  - (3) A description of the equipment;
  - (4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;
  - (5) A description of the articles to be manufactured or services to be performed;
  - (6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment beyond the expected expiration or completion date of the NASA contract;
  - (7) A statement that the use of Government property is consistent with the best interests of the United States;
  - (8) A statement that such use is legally authorized; and
  - (9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States (e.g., an approved license or agreement from the Department of State or Department of Commerce).
- (d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

**1845.406 Use of Government production and research property on independent research and development programs.**

**1845.406-70 NASA policy.**

The contracting officer should not authorize contractor use of Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that --

- (a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and
- (b) No competitive advantage will accrue to the contractor through such use (see FAR 45.201).

**1845.407 Non-Government use of plant equipment.**

For NASA, the coverage in FAR 45.407, applies to all equipment, not just plant equipment.

(a)(i) The Assistant Administrator for Procurement (Code HS) is the approval authority for non-Government use of equipment exceeding 25 percent.

(ii) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All equipment having a unit acquisition cost of less than \$25,000 at any single location may be averaged over a quarterly period. Equipment having a unit acquisition cost of \$25,000 or more shall be considered on an item-by-item basis.

(iii) Approval for non-Government use of less than 25 percent shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

(iv) Requests for the approval shall be submitted to Code HS at least 6 weeks in advance of the projected use and shall include--

- (A) The number of equipment items involved and their total acquisition cost; and
- (B) An itemized listing of equipment having an acquisition cost of \$25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

**Subpart 1845.5--Management of Government Property in the Possession of Contractors**

**1845.502 Contractor responsibility.**

**1845.502-1 Receipts for Government property.**

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, NASA Property in the Custody of Contractors (see 1845.7101).

**1845.502-70 Contractor-acquired property.**

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) Facilities.

(1) Prior contracting officer approval, if the facilities are not already specifically described in the contract as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability.

(3) Submission of the written statement prescribed by FAR 45.302-1(a)(4).

(b) Special test equipment.

(1) Contracting officer approval 30 days in advance if the equipment is not identified in the solicitation or contract.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

(c) Special tooling.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability.

(d) Material. If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(e) Agency-peculiar property.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

**1845.505 Records and reports of Government property.**

**PART 1848  
VALUE ENGINEERING**

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**PART 1848  
VALUE ENGINEERING**

**Subpart 1848.1--Policies and Procedures**

**1848.102 Policies.**

(a) The Assistant Administrator for Procurement (Code HS) is the approval authority for exemptions.

(f) In calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

**1848.103 Processing value engineering change proposals.**

(a) Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract with the following information:

- (i) Date of VECP receipt;
- (ii) Date for notifying the contractor of VECP acceptance or rejection;
- (iii) Notification of the potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;
- (iv) Request for a technical evaluation, with complete rationale for recommended acceptance or rejection, to include if acceptance is recommended:
  - (A) An estimate of the type of savings, Government costs, etc., that can be expected from its acceptance;
  - (B) A procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and
  - (C) Additional funds if acceptance of the VECP results in negative instant contract savings.
- (v) Technical evaluation due date.

**1848.104 Sharing arrangements.**

**1848.104-3 Sharing collateral savings.**

(a) The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

### **Subpart 1848.2--Contract Clauses**

#### **1848.201 Clauses for supply or service contracts.**

(a)(6) The Assistant Administrator for Procurement (Code HS) is the approval authority for exemptions.

(b) The contracting officer shall not insert the clause at FAR 52.248-1, Value Engineering, either with or without its Alternates, in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might benefit from application of VE techniques, the contracting officer shall consider inserting the VE incentive clause at FAR 52.248-1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248-1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248-1 with its Alternate II under the conditions prescribed in paragraph (c) of this section.

The Assistant Administrator for Procurement (Code HS) must be notified prior to taking any action to terminate because of a major breach of safety or security.

**1849.105 Duties of termination contracting officer after issuance of notice of termination.**

**1849.105-70 Termination docket checklist.**

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

**1849.110 Settlement negotiation memorandum.**

**1849.110-70 Memorandum contents.**

The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

(a) *General information.*

(1) *Identification.*

(i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) Names and titles of contractor and Government personnel who participated in the negotiation.

(2) *Description of terminated contract.*

(i) Contract number

(ii) Date of award;

(iii) Contract type;

(iv) General description of contract items;

(v) Total contract price; and

(vi) Applicable contract termination provisions and clause.

(3) *Termination notice.*

(i) Date of the termination notice;

(ii) Effective date of termination;

(iii) Scope and nature of termination (complete or partial);

(iv) Items terminated;

(v) Unit prices;

(vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vii) Whether the termination notice was amended and, if so, why;

(viii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(ix) Any redirection of common items and return of goods to the contractor's suppliers; and

(x) Extent of contract performance and timely deliveries by the contractor.

(b) *Contractor's settlement proposal.*

(1) *Date and amount.* Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) *Basis of claim.* E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.

(3) *Examination of proposal.* Types of reviews made and by whom (audit, engineering, legal, or other).

(c) *Tabular summary of contractor's claim and the settlement.* The cost elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) *Settlement narrative summary.*

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) *Recommendation.* Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) *TCO Signature and date.*

#### **1849.111 Review of proposed settlements.**

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor to grant approval or ratification of proposed subcontractor settlements described in FAR 49.108-3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not applicable to settlements between the contractor and its first tier subcontractors.

### **Subpart 1849.5--Contract Termination Clauses**

#### **1849.505 Other termination clauses.**



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**PART 1850  
EXTRAORDINARY CONTRACTUAL ACTIONS**

**Subpart 1850.2--Delegation of and Limitations on Exercise of Authority**

**1850.202 Contract adjustment boards.**

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

**Subpart 1850.3--Contract Adjustments**

**1850.305 Processing cases.**

**1850.305-70 Submission of request to the Contract Adjustment Board.**

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law (Code GG), including in the forwarding letter --

- (1) The nature of the case;
- (2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

#### **1850.306 Disposition.**

##### **1850.306-70 Implementation of the Contract Adjustment Board's decision.**

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law (Code GG).

#### **Subpart 1850.4--Residual Powers**

##### **1850.403 Special procedures for unusually hazardous or nuclear risks.**

###### **1850.403-1 Indemnification requests.**

(a) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

###### **1850.403-170 Subcontractor indemnification requests.**

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.403-1. The prime contractor's request shall provide information responsive to 1850.403-1, FAR 50.403-1, and FAR 50.403-2(a)(1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

###### **1850.403-2 Action on indemnification requests.**

(a) If recommending approval, the contracting officer shall forward the required information to the Assistant Administrator for Procurement (Code HS), along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.306, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

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(C) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.403-2(a) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

**1850.470 Lead NASA installation.**

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.



(A) **1.2 BID ENVELOPES (GSFC 52.214-90) (AUGUST 1987)** This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number ("1.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214-90" specifies the clause number.

(B) **GSFC 52.214-90--Bid Envelopes (AUGUST 1987)** This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(c) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

#### **1852.103-70 Identification of modified provisions and clauses.**

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

"52.232-28 Electronic Funds Transfer Payment Methods (APR 1989)--as modified by NASA FAR Supplement 1832.908(a)"

#### **1852.104 Procedures for modifying and completing provisions and clauses.**

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

### **Subpart 1852.2--Text of Provisions and Clauses**

#### **1852.203-70 Display of Inspector General Hotline Posters.**

As prescribed in 1803.7001, insert the following clause:

##### **DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUNE 2001)**

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546-0001, (202) 358-1220.

**(End of clause)**

#### **1852.204-74 Central Contractor Registration.**

As prescribed in 1804.7404, insert the following clause:

##### **CENTRAL CONTRACTOR REGISTRATION (MAY 2002)**

(a) *Definitions.* As used in this clause--

(1) **"Central Contractor Registration (CCR) database"** means the primary DoD repository for contractor information required for the conduct of business with NASA.

(2) **"Data Universal Number System (DUNS) number"** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

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(3) **“Data Universal Numbering System +4 (DUNS+4) number”** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying sub-units or affiliates of the parent business concern.

(4) **“Commercial and Government Entity Code (CAGE Code)”** means –

(i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that is recorded and maintained by DLIS in the CAGE master file.

(5) **“Registered in the CCR database”** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding CAGE code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors performing work outside of the United States.

(2) The Contracting Officer will verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award after March 31, 2001.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 888-CCR-2423 (888-227-2423).

**(End of clause)**

#### **1852.204-75 Security Classification Requirements.**

As prescribed in 1804.404-70, insert the following clause:

#### **SECURITY CLASSIFICATION REQUIREMENTS (SEPTEMBER 1989)**

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of \_\_\_\_\_ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment \_\_\_\_ [Insert the attachment number of the DD Form 254].

**(End of clause)**

**1852.227-11 Patent Rights--Retention by the Contractor (Short Form).**

As prescribed at 1827.303-70(a), modify the clause at FAR 52.227-11 by adding the following subparagraph (5) to paragraph (c) of the basic clause; adding the following subparagraph (5) to paragraph (f); and using the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(c)(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.

**(End of addition)**

(f)(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

**(End of addition)**

(g)(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

**(End of substitution)**

**1852.227-14 Rights In Data--General.**

As prescribed in 1827.409(a), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227-14:

(3)(i) The Contractor agrees not to establish claim to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize



the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

**(End of addition)**

**1852.227-17 Rights in Data--Special Works**

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227-17:

(f) Whenever the words "establish" and "establishment" are used in this clause, with reference to a claim to copyright, they shall be construed to mean "assert" and "assertion", respectively.

**(End of addition)**

**1852.227-19 Commercial Computer Software--Restricted Rights.**

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227-19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

**(End of addition)**

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227-19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

**(End of addition)**

**1852.227-70 New Technology.**

As prescribed in 1827.303-70(b), insert the following clause:

**NEW TECHNOLOGY**

**(MAY 2002)**

**(a) Definitions.**

**"Administrator,"** as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

**"Contract,"** as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

**"Made,"** as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

**"Nonprofit organization,"** as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

**"Practical application,"** as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

**"Reportable item,"** as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

**"Small business firm,"** as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

**"Subject invention,"** as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

**(b) Allocation of principal rights.**

**(1) *Presumption of title.***

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the

reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(2) ***Property rights in subject inventions.*** Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) ***Waiver of rights.***

(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) **Minimum rights reserved by the Government.**

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR Section 1245, Subpart 1, the Government reserves--

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) **Minimum rights to the Contractor.**

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its

domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

**(e) Invention identification, disclosures, and reports.**

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the

Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to paragraph 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

**(f) Examination of records relating to inventions.**

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

**(g) Withholding of payment (this paragraph does not apply to subcontracts).**

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of

the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--

- (i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;
- (ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;
- (iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or
- (iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

**(h) Subcontracts.**

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall--

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of subparagraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) **Preference for United States industry.** Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(End of clause)**

#### **1852.227-71 Requests for Waiver of Rights to Inventions.**

As prescribed in 1827.303-70(c), insert the following provision in all solicitations that include the clause at 1852.227-70, New Technology:

#### **REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS**

**(APRIL 1984)**

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

**(End of provision)**

**1852.227-72 Designation of New Technology Representative and Patent Representative.**

As prescribed in 1827.303-70(d), insert the following clause:

**DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE  
AND PATENT REPRESENTATIVE**

**(JULY 1997)**

(a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights--Retention by the Contractor (Short Form)," whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

<b>Title</b>	<b>Office Code</b>	<b>Address (including zip code)</b>
New Technology Representative		
Patent Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights--Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305-370 of the NASA FAR Supplement.

**(End of clause)**



**1852.227-84 Patent Rights Clauses.**

The contracting officer shall insert the following provision as prescribed in 1827.303-70(e):

**PATENT RIGHTS CLAUSES  
(DECEMBER 1989)**

This solicitation contains the patent rights clauses of FAR 52.227-11 (as modified by the NFS) and NFS 1852.227-70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227-70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227-11 shall not apply.

**(End of Provision)**

**1852.227-85 Invention Reporting and Rights--Foreign.**

As prescribed in 1827.303-70(f), insert the following clause:

**INVENTION REPORTING AND RIGHTS--FOREIGN  
(APRIL 1986)**

(a) As used in this clause, the term "invention" means any invention, discovery or improvement, and "made" means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

**(End of Clause)**

**1852.227-86 Commercial Computer Software--Licensing.**

As prescribed in 1827.409-70, insert the following clause:

**COMMERCIAL COMPUTER SOFTWARE--LICENSING**

**(DECEMBER 1987)**

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be--

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in subparagraphs (d)(2)(i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d)(2), (3), and (4) of this clause.

**(End of clause)**

**1852.227-87 Transfer of Technical Data Under Space Station International Agreements.**

As prescribed at 1827.670-2, insert the following clause:

**TRANSFER OF TECHNICAL DATA UNDER SPACE STATION  
INTERNATIONAL AGREEMENTS  
(APRIL 1989)**

1. In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

2. The Contractor agrees, when specifically directed in writing by the Contracting Officer, or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the Contracting Officer or designated representative.

3. It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with 2, above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.

4. Nothing contained in this clause affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the Rights in Data clause of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that clause.

5. The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

**(End of clause)**

**1852.232-81 Contract Funding.**

As prescribed in 1832.705-270(b), insert the following clause:

**CONTRACT FUNDING  
(JUNE 1990)**

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is \$ \_\_\_\_\_. This allotment is for [Insert applicable item number(s), task(s), or work description] \_\_\_\_\_ and covers the following estimated period of performance: \_\_\_\_\_.

(b) An additional amount of \$\_\_\_\_\_ is obligated under this contract for payment of fee.

**(End of clause)**

**1852.232-82 Submission of Requests for Progress Payments.**

As prescribed in 1832.502-470, insert the following clause:

**SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS  
(MARCH 1989)**

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

**(End of clause)**

**1852.233-70 Protests to NASA.**

As prescribed in 1833.106-70, insert the following provision:

**PROTESTS TO NASA  
(MAY 2002)**

Potential bidders or offerors may submit a protest under 48 CFR Part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Deputy Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Deputy Assistant Administrator for Procurement, NASA Code H, Washington, DC 20546-0001.

**(End of provision)**

**1852.235-70 Center for AeroSpace Information - Final Scientific and Technical Reports.**

As prescribed in 1835.070(a), insert the following clause:

**CENTER FOR AEROSPACE INFORMATION - FINAL SCIENTIFIC AND  
TECHNICAL REPORTS  
(JULY 2000)**

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (<http://www.sti.nasa.gov>) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information, which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for

or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) In addition to the final report, as defined at 1827.406-70(a)(3), submitted to the contracting officer, a reproducible copy and a printed or reproduced copy of the final report or data shall be concurrently submitted to:

Center for AeroSpace Information (CASI)

Attn: Document Processing Section

7121 Standard Drive

Hanover, Maryland 21076-1320

Phone: 301-621-0390

FAX: 301-621-0134

(d) The last page of the final report submitted to CASI shall be a completed Standard Form (SF) 298, Report Documentation Page. In addition to the copy of the final report, the contractor shall provide, to CASI, a copy of the letter transmitting the final report to NASA for its Document Availability Authorization (DAA) review.

(e) The contractor shall not release the final report, outside of NASA, until the DAA review has been completed by NASA and availability of the report has been determined.

**(End of clause)**

### **1852.235-71 Key Personnel and Facilities.**

As prescribed in 1835.070(b), insert the following clause:

#### **KEY PERSONNEL AND FACILITIES (MARCH 1989)**

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; provided, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

**(End of clause)**

### **1852.235-72 Instructions for Responding to NASA Research Announcements.**

As prescribed in 1835.070(c), insert the following provision:

#### **INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (MAY 2002)**

##### **(a) General.**

(1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting

organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) **NRA-Specific Items.** Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

**(1) Transmittal Letter or Prefatory Material.**

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc.;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) **Restriction on Use and Disclosure of Proposal Information.** Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

**Notice**

**Restriction on Use and Disclosure of Proposal Information**

The information (data) contained in [insert page numbers or other identification] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not,